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APPROVING AND IMPLEMENTING THE UNITED STATES-CANADA FREE-TRADE AGREEMENT

SEPTEMBER 15 (legislative day, SEPTEMBER 7), 1988.—Ordered to be printed

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Mr. BENTSEN, from the Committee on Finance, and on behalf of Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry; Mr. JOHNSTON, from the Committee on Energy and Natural Resources; and Mr. GLENN, from the Committee on Governmental Affairs, jointly, submitted the following

REPORTS AND OTHER MATERIALS

[To accompany H.R. 5090]

The Committees on Finance; Agriculture, Nutrition, and Forestry; Energy and Natural Resources; and Governmental Affairs, to which was referred the bill (H.R. 5090) having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. REPORTS AND OTHER MATERIALS OF THE COMMITTEES

PRELIMINARY STATEMENT

Pursuant to an order of the Senate entered Thursday, August 11, 1988, the Committee on Finance was authorized to compile the reports and other materials of the several Committees to which H.R. 5090, the bill to approve and implement the United States-Canada Free-Trade Agreement, was jointly referred. This document contains the reports of those Committees that chose to report, in addition to other materials provided by other Committees to which the bill was referred.

PART I. REPORT OF THE COMMITTEE ON FINANCE

The Committee on Finance, to which was referred the bill (H.R. 5090) to approve and implement the United States-Canada Free-Trade Agreement, having considered the same, reports favorably thereon and recommends that the bill do pass.

INTRODUCTION

Section 102(b) of the Trade Act of 1974, as amended by the Trade and Tariff Act of 1984, authorized the President, among other things, to enter into bilateral trade agreements providing for the elimination or reduction of tariffs and non-tariff barriers to products traded between the United States and other countries. Under the 1984 amendment, this authority was effective ony for the 13-year period beginning on January 3, 1975. Subject to procedural and consultative prerequisites, discussed below, the President was authorized to submit such an agreement, together with implementing legislation and other necessary papers, to the Congress for approval under procedures for expedited, "fast-track" consideration established in the Trade Act of 1974.

On January 2, 1988, representatives of the Governments of the United States and Canada entered into an agreement to establish a free trade area. On July 25, 1988, President Reagan transmitted this agreement to the Congress for approval, together with necessary implementing legislation and a Statement of Administrative Actions the Administration and independent Federal agencies will take to implement it.

The bill reported here (H.R. 5090), which is the implementing legislation submitted by the President without amendments, approves the United States-Canada Free-Trade Agreement (hereinafter referred to as the "Agreement") and the Statement of Administrative Action and contains a number of additional provisions to implement the Agreement into U.S. law, including provisions authorizing the President to proclaim the elimination of tariffs on goods imported from Canada according to a schedule established in the Agreement.

At the time the President submitted the implementing bill, the Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418, had not yet been enacted. Therefore, references in the bill and this report to particular sections of U.S. statutes are based on statutes that were in effect prior to enactment of P.L. 100-418. Under the fast-track legislative procedures, no amendment to the implementing bill is possible at this point. If it is enacted into law, there will be a need for subsequent legislation to conform its provisions to U.S. statutes as amended by P.L. 100-418.

General Explanation

A. Background

On December 10, 1985, President Reagan notified the Congress that the Government of Canada had formally requested that the United States negotiate a free trade area agreement.

Under the 1984 amendments to the Trade Act of 1974, the negotiation of a free trade area agreement with the Government of Canada could not proceed if disapproved within 60 session days of the President's notification. In fact, the Committee on April 23, 1986, considered a motion to disapprove the negotiation, which failed ten-to-ten. This tie vote permitted the negotiations to proceed.

The reluctance of the Committee in April 1986 to allow this negotiation to proceed was not based upon opposition to the idea of a free trade area agreement with Canada. Indeed, the Committee on Finance had been encouraging such a negotiation for many years.

Section 612 of the Trade Act of 1974, Public Law 93-618, expressed the sense of the Congress that the United States should enter into a trade agreement with Canada that "will guarantee continued stability to the economies of the United States and Canada." The provision specifically identified a free trade area for such an agreement. This provision originated in the Committee on Finance, which said, in reporting the bill containing the provision to the full Senate:

> The Committee strongly feels . . . that any such agreement must provide free trade in both directions.

In the Trade Agreements Act of 1979, Congress amended section 612 to direct the President to study the desirability of entering into trade agreements with countries in the northern portion of the Western Hemisphere. The 1979 provision also originated in the Senate Committee on Finance, and in reporting the bill containing the amendment the Committee stated with respect to the amendment the following:

> With increasing economic interdependence among the United States and many countries in the northern portion of the Western Hemisphere, including Canada, Mexico, and Central American and Caribbean countries, it may be desirable to enter into trade agreements with such countries to promote mutual economic stability and economic growth through the mutual expansion of market opportunities.

Moreover, the Committee actively supported this negotiation. On December 9, 1986, a delegation of Members of the Committee from both political parties traveled to Ottawa, Canada, to discuss the status of negotiations the President had undertaken with officials of the Government of Canada, including the Prime Minister, and members of the opposition parties, as well as leaders of the business community of Canada. It is widely believed that these negotiations were stalled prior to this trip, and that this trip was a significant, if not a critical, factor in moving these negotiations forward.

The Committee was, however, concerned in April 1986 that the President would not adequately consult with the Congress in the course of this negotiation. This concern turned out to be justified to some extent with respect to the process of implementing the Agreement.

On October 3, 1987, President Reagan Notified Congress that he intended to enter into a free trade agreement with Canada on January 2, 1988, "contingent upon successful completion of the negotiations." The Agreement was, in fact, signed by the President on the latter date.

However, during the period between October 3, 1987 and January 2, 1988, the administration was unable fully to carry out the requirements of section 102(c) of the Trade Act of 1974 to consult with the Committee on Finance of the Senate, and with each Committee of the Senate which has jurisdiction over legislation involving subject matters which would be affected by such a trade agreement, *before* the President enters into the agreement.

The reason the President could not consult fully was that on October 3, 1987, he only had before him a general outline of the Agreement with many of the important details missing; he did not have a draft of the Agrement. In fact, the final text of the Agreement was not made available to Congress until after January 2, 1988. If he had notified Congress of his intention to enter into the Agreement later than October 3, 1987, then he would have been unable to invoke the fast-track legislative procedure.

While compliance with section 102(c) is not strictly a condition of so-called fast-track legislative treatment, the failure of full consultation between October 3, 1987 and January 2, 1988 made it necessary to take actions to assure full consultation with Congress in carrying out the statutory pre-conditions of fast-track legislative action, especially consultations on the content of this bill, in order to assure the objectives of the fast-track process were achieved. Two actions were taken in this regard.

First, a special procedure for consultation on the implementing bill was created for this Agreement by an exchange of letters between Congressional leaders and Cabinet officers on behalf of the Administration. The purpose of the procedure was to imitate, insofar as was possible, the regular workings of the fast-track. This procedure is described below.

Second, provisions were included in the recently enacted Omnibus Trade and Competitiveness Act of 1988 to ensure the Executive Branch will consult in a timely manner in furture trade negotiations, including especially a provision changing the deadlines for a future termination of fast-track procedures.

In the exchange of letters, which was dated Febraury 17, 1988, the Administration agreed with the leadership of the Senate and the House and the Chairmen of the Senate Committee on Finance and House Committee on Ways and Means that the President would not forward legislation to implement the Agreement to the Congress prior to June 1, 1988. In return, it was pledged that each House of the Congress would vote on the legislation before the end of the current session.

The Committee on Finance held hearings on the Agreement on March 17, and April 12, 13, 15, and 21, 1988. In addition, in meetings during May 1988 the Committee made recommendations for the substance of the implementing bill and, together with the House Committee on Ways and Means resolved differences in the recommendations of the two Committees by May 27, 1988. The administration, informally approved that substance.

In accordance with the agreement with the Administration contained in the February 17, 1988 exchange of letters, the Administration worked closely with the Senate Committee on Finance and the House Committee on Ways and Means and as a result the two Committees' recommendations on the substance of the bill were completed before June 1, 1988. Because of additional concerns the Administration sought to address on certain provisions, however, the recommendations were not finally agreed upon until July 1988. Other Committees of the Senate and House also reached agreement on provisions of the implementing legislation within their jurisdictions in a timely fashion.

On July 14, 1988, the Majority Leader of the Senate and the Speaker of the House transmitted proposed implementing legislation to the Secretary of the Treasury and the U.S. Trade Representative (USTR) containing the Congressional recommendations. As required by section 102 of the Trade Act of 1974, the bill, together with the final text of the Agreement, the Statement of Administrative Action, and a statement of how the Agreement serves the interests of U.S. commerce, was submitted by the President to the Congress on July 25, 1988. The Committee on Finance ordered H.R. 5090 and its Senate counterpart, S. 2651, favorably reported on August 9, 1988.

B. The Agreement

A free trade area is an arrangement between two or more countries in which each removes tariff and other restrictions on trade between those countries. Article XXIV of the General Agreement on Tariffs and Trade (GATT) permits free trade areas as a deviation from the non-discriminatory most-favored-nation (MFN) principle of Article I if the agreement meets certain criteria. These are that the free trade area:

(1) Must eliminate duties and other restrictive measures on "subsequently all" trade between the parties; and,

(2) Duties and other regulations of commerce maintained by the parties may not be higher or more restrictive to the trade of third countries than they were prior to the agreement.

The only other free trade area agreement to which the United States is a party is the one concluded in 1985 with Israel.

The central provision of the Agreement is contained in Chapter 4, which eliminates, by stages over a 10-year period, all tariffs on goods traded bilaterally. It also contains rules of origin for determining whether goods entering the United States or Canada from the other party have sufficient content originating in one or both countries to qualify for preferential treatment under the Agreement. Chapter 5 states as a general rule that each party shall accord non-discriminatory national treatment to the goods of the other party.

Other provisions deal with liberalizing or harmonizing laws and regulations relating to technical standards, agriculture, wine and distilled spirits, energy, automotive products, government procurement, services, investment, and financial services. Finally, the Agreement contains institutional provisions for the avoidance or settlement of disputes relating to the interpretation or application of the Agreement and establishes a mechanism for settlement of disputes over antidumping and countervailing duty cases by binational panels. The Agreement is scheduled to enter into force on January 1, 1989.

Not all provisions of the Agreement are reflected by provisions in the implementing legislation. Many obligations of the Agreement require no action on the part of the United States to effect implementation because U.S. law or practice is already consistent with the Agreement. Other obligations can be implemented through administrative action, while many provisions affect only outstanding laws and regulations of Canada.

C. Procedures for Consideration

The procedures for Congressional consideration of the Agreement were set out in sections 102 and 151 through 154 of the Trade Act of 1974, as amended by the Trade and Tariff Act of 1984 (these provisions were amended by the Omnibus Trade and Competitiveness Act of 1988, P.L. 100-418, but it does not apply to this bill). Before entering into a trade agreement, the President had to, for a period of 90 days, consult with the appropriate Committees of jurisdiction over subject matters affected by the agreement. After entering into the agreement, the President had to submit the agreement to the Congress, together with a draft implementing bill and a statement of administrative action proposed to implement the agreement. The implementing bill is required to contain provisions formally approving the agreement and the statement of administrative action and proposing amendments to current law or new authority required or appropriate to implement the agreement.

The implementing bill is introduced in both Houses of Congress on the day it is submitted by the President and is referred to the Committee or Committees of jurisdiction. With regard to an implementing revenue bill (such as this bill, which authorizes tariff cuts) House Committees have 45 days in which to report the bill; any Committee which does not do so in that time will be automatically discharged from further consideration. A vote on final passage by the House must take place on or before the 15th day after a Committee reports or is discharged. In the Senate, the implementing revenue bill received from the House must be acted upon in Committee within 15 days after it is referred or 45 days from Senate introduction of the bill, whichever is longer, or be discharged. The Senate then must vote within 15 days. In computing these periods any day on which the particular House of Congress in question is not in session must be excluded.

No amendments to the implementing bill are in order in either House. Debate is limited to no more than 20 hours in the Senate.

D. United States-Canada Trade

The United States and Canada have the largest bilateral trading relationship in the world. Canada is the largest purchaser of U.S. products and the second largest supplier of U.S. imports. Since at least 1983 U.S. exports to Canada have been twice those to Japan, the second leading U.S. export market. Until 1985 (when Japan took the lead) Canada was also the leading source of U.S. imports. Although no longer the principal U.S. import source, Canada remains the most important U.S. trading partner with bilateral trade in goods in 1987 totalling $130.8 billion.

In 1987 the U.S. merchandise trade deficit with Canada was $12.2 billion. Until 1986 the U.S. deficit with Canada ranked second only to that with Japan. It is now the fourth largest, behind U.S. trade deficits with Japan, Taiwan, and West Germany.

Half of U.S. exports to Canada and 43 percent of U.S. imports from Canada fell within the broad category of machinery and transport equipment. Within this category trade in road vehicles dominated, with such vehicles representing 26 percent of U.S. exports in 1987 and 29 percent of U.S. imports. Although the United States runs deficits in transport equipment, those deficits are offset by surpluses in machinery and equipment. Trade in the broad machinery and equipment category is, therefore, roughly balanced between the two countries. However, in the categories of trade in natural resources and trade in manufactured goods, the United States posts significant deficits.

Approximately 75 percent of the trade between the United States and Canada currently receives duty-free treatment. Tariffs on the remaining 25 percent average four to five percent for products entering the United States and about twice that amount (nine to ten percent) for products entering Canada.

General Description of the Bill

SHORT TITLE (SECTION 1)

Section 1 entitles the Act the "United States-Canada Free-Trade Agreement Implementation Act of 1988."

PURPOSES (SECTION 2)

Section 2 enumerates the purposes of the bill as:

(1) To approve and implement the Agreement;

(2) To strengthen and develop economic relations between the United States and Canada for their mutual benefit;

(3) To establish the free trade area between the two nations through the reduction and elimination of barriers to trade in goods and services and to investment; and

(4) To lay the foundation for further cooperation to expand and enhance the benefits of the Agreement.

TITLE I—APPROVAL OF AGREEMENT AND RELATIONSHIP TO U.S. LAW

Approval of the Agreement (Section 101)

(a) *Approval of Agreement and Statement of Administrative Action.*—Section 151 of the Trade Act of 1974 (19 U.S.C. 2191) requires that a bill implementing a trade agreement specifically contain provisions approving the trade agreement and the statement of administrative action the Administration proposes to take to implement the agreement. Section 101(a) complies with this requirement. In addition, it approves certain letters exchanged between the United States and Canada contemporaneously with signing of the Agreement confirming understandings of the two countries regarding Articles 301 (rules of origin), 401 (tariff elimination), and 2008 (plywood standards) of the Agreement.

The Committee notes that the Agreement and this bill are designed for the particular circumstances of U.S. trade with Canada and reflect those matters on which negotiations with Canada were successful. They are not necessarily to be taken as a precedent or model for other bilateral or multilateral agreements, nor does Committee approval of this Agreement imply approval of future trade agreements.

(b) *Conditions for entry into force of the Agreement.*—Article 2105 of the Agreement provides that it will enter into force upon an exchange of diplomatic notes between the United States and Canada certifying the completion of necessary legal procedures by each country. Section 101(b) authorizes the President to take this step on or after January 1, 1989. However, as a condition on his authority to agree to entry into force, this section requires that he first determine that Canada has taken measures necessary to comply with the obligations of the Agreement.

The purpose of this provision is to cover the situation in which U.S. legislation implementing the Agreement is enacted prior to the entry into force of the Agreement and prior to passage of implementing legislation in Canada. It ensures that the obligations of the Agreement will not be binding on the United States unless and until the President is satisfied that Canada has fully complied with its obligations as well, including the obligation of Article 103 of the

Agreement to ensure that all necessary measures are taken to ensure the observance of the provisions of the Agreement by provincial and local governments.

(c) *Report on Canadian practices.*—Section 101(c) requires the USTR within 60 days after the date of enactment, but not later than December 15, 1988, to submit to the Congress a report identifying major current Canadian practices, as well as the legal authority for those practices, that in the opinion of the USTR are not in conformity with the Agreement and require a change in Canadian law, regulation, policy or practice to conform to the Agreement. This requirement will aid in making the determination required in subsection (b). It is intended that the practices of provincial and local governments, as well as the Canadian Federal Government, be included in this report.

Relationship of the Agreement to U.S. Law (Section 102)

(a) *U.S. law to prevail.*—Section 102(a) establishes the rule that, in the event of conflict between any provision of U.S. law and any provision of the Agreement, U.S. law will prevail. The Agreement is not self-executing and has no independent effect under U.S. law. For example, to the extent not altered by this implementing bill, existing U.S. trade laws, including the antidumping and countervailing duty laws, are not superseded by any provision of the Agreement.

(b) *Agreement to prevail over conflicting State law.*—Subsection (b) provides that provisions of the Agreement will prevail, to the extent of the conflict, over conflicting State laws. The bill provides differing treatment for Federal and State laws in this respect because the implementing bill and the administrative measures described in the Statement of Administrative Action are intended to implement obligations of the Federal Government under the Agreement in a comprehensive manner. No further action at this time by the Federal Government is meant to be required or implied. The individual States, on the other hand, may not yet have undertaken whatever actions may be necessary on their parts to comply with the Agreement, and the provision giving effect to the Agreement in the event of conflict with the Agreement will ensure consistency of State laws with U.S. obligations under the Agreement.

The specific reference in this section to State laws as including those regulating or taxing the business of insurance is intended to deal with section 2 of the McCarran-Ferguson Act, which states that no Federal statute is to be construed to supersede any State law regulating or taxing the business of insurance unless the Federal statute specifically relates to the business of insurance.

This section further provides that the United States may bring a judicial action challenging any provision of State law, or its application, on the ground that it is inconsistent with the Agreement. As discussed below, no private right of action based on the Agreement is contemplated.

Court action is to be considered a last resort. The implementing bill envisions that the Administration will conduct an outreach program to the States to encourage their voluntary compliance with the Agreement and minimize instances in which the Agreement will prevail over State laws by force of law. Voluntary compliance by the States would also eliminate the necessity for litigation to compel State adherence. Thus, the bill requires the President to initiate consultations with the States on implementation of the Agreement, both through the intergovernmental policy advisory committees on trade established under section 306(c)(2)(A) of the Trade and Tariff Act of 1984 and with individual States as necessary to resolve particular issues that may arise. The Committee expects that these consultations will begin immediately after the effective date of this implementing legislation.

(c) *Private right of action excluded.*—Subsections (b)(3) and (c) deal with the question of whether either the Agreement or this bill creates a private right of action to challenge Government action on the ground that it is inconsistent with the obligations of the United States under the Agreement. Private remedies on this ground are barred. The bill provides that no person other than the United States shall have a cause of action or defense under the Agreement or by reason of Congressional approval of the Agreement (the only exception is with regard to a constitutional challenge to the binational dispute panel under section 516A(g)(4), as provided in section 401(c) of the bill). Moreover, subsection (c) forecloses a challenge in any action under any provision of law to action or inaction by any agency of Federal, State or local government on the ground of inconsistency with the Agreement.

(d) *Initial regulations.*—Section (d) requires initial administrative regulations necessary or appropriate to implement the Agreement to be issued, to the maximum extent possible, within one year after the date the Agreement enters into force. With regard to any implementing provision that may take effect or be invoked after the date of entry into force of the Agreement, and thus will require later action to promulgate regulations, those regulations shall, to the maximum extent possible, be issued within one year of the date the provision takes effect.

(e) *Subsequent amendment, repeal, or enactment.*—Section 102(e) applies the special requirements and procedures of section 3(c) of the Trade Agreements Act of 1979 to Congressional approval of any amendment, repeal, or enactment of a U.S. statute that the President determines is necessary to implement any future requirement of, amendment to, or recommendation, finding or opinion under the Agreement. The Agreement anticipates, and the implementing bill authorizes, additional negotiations between the United States and Canada on subject matters not encompassed, in negotiations may result in amendments to the Agreement that will necessitate legislative action in order to implement new U.S. obligations. Moreover, the dispute settlement provisions of the Agreement may result in decisions that could require legislative changes. For these reasons, it is desirable to provide expedited treatment for any such legislation.

Section 3(c) of the 1979 Act requires the President, at least 30 days before submitting a draft bill and statement of any proposed administrative action to implement the new requirement, amendment, recommendation, finding, or opinion, to consult with the House Committee on Ways and Means and the Senate Committee on Finance, as well as any other Committee with jurisdiction over the matters being implemented. The President is then required to transmit to the Congress the text of the amendment, a statement of proposed administrative action, and an explanation of why the legislation and administrative action are necessary and serve the interest of U.S. commerce. The "fast-track" provisions of section 151 of the Trade Act of 1974 would then apply to the legislation.

Because of Congressional concern about possible abuse of the fast-track procedure under section 102(e) that could result from leaving the period of its application indefinitely open-ended, it is available only for 30 months after the Agreement enters into force. The need or advisability of renewing this authority can be reviewed at the appropriate time.

Consultation and Layover Requirements for Proclaimed Actions (Section 103)

As discussed more fully below, certain actions required to be done to implement the Agreement pursuant to this bill are authorized to be proclaimed by the President rather than directly enacted. The actions to be proclaimed immediately are described in the Statement of Administrative Action, and thus will have already been subject to Congressional scrutiny before they are actually proclaimed. Any such actions may not take effect earlier than 15 days after the date of publication of the proclamation in the Federal Register.

The President is further authorized in certain circumstances, for example, in sections 104(b) and 210(b), to take action in the future to modify a proclamation previously issued. In those instances, a mechanism is needed to ensure Congressional and private sector consultation before the action is taken.

Section 103 provides a consultation and layover requirement. Where the bill specifically provides that Presidential implementation of an action is subject to this requirement, it means that the action may be proclaimed only if the President has first obtained the advice of all appropriate private sector advisory committees established under section 135 of the Trade Act of 1974 and the U.S. International Trade Commission (ITC); the President has submitted a report to the House Committee on Ways and Means and the Senate Committee on Finance explaining the proposed action and the reasons supporting it, together with the advice obtained from the ITC and the advisory committees; a period of at least 60 calendar days elapses following submission of the report; and the President has consulted with the concerned Committees during the 60-day period.

Harmonized System (Section 104)

All references to tariffs in the Agreement are to the tariff nomenclature system established under the International Convention on the Harmonized Commodity Description and Coding System, known as the Harmonized System, which is a uniform international system of tariff classification. For example, the schedule of tariff reductions called for in Chapter 4 and the rules of origin in Chapter 3 are expressed in terms of the Harmonized System.

At the time the implementing bill was submitted to the Congress, the United States had not yet implemented the Harmonized System into U.S. law. However, a provision to implement it as of

January 1, 1989, is contained in the recently enacted Omnibus Trade and Competitiveness Act of 1988, H.R. 4848.

Section 104 was drafted to take into account the possibility that the Harmonized System might not be implemented by the United States by the date of entry of the Agreement into effect. It provides that, if the Harmonized System is not implemented, the President is authorized to proclaim any modifications to the Tarrif Schedules of the United States as may be necessary to give effect to provisions of the Agreement that would otherwise be given effect under the Harmonized System. It also provides that, in the interim, any reference in the bill to the Harmonized System is to be treated as a reference to the Tariff Schedules.

Implementing Actions in Anticipation of Entry Into Force (Section 105)

Section 105 grants specific authority, after the date of enactment, for the President to proclaim such actions, and any other agency of the Government to issue such regulations, as are necessary to ensure that provisions of this bill that are supposed to take effect on the date of entry of the Agreement into force are implemented. This authority is subject to the consultation and layover requirement of section 103 and other applicable limitations, and no proclamation or regulation may have an earlier effective date than the date of entry into force.

TITLE II—TARIFF MODIFICATION, RULES OF ORIGIN, USER FEES, DRAWBACK, ENFORCEMENT AND OTHER CUSTOMS PROVISIONS

Tariff Modifications (Section 201)

The centerpiece of the Agreement is contained in Article 401 and Annexes 401.2 and 401.7, which call for the staged elimination of tariffs applicable to goods traded bilaterally by January 1, 1998. Generally, dutiable products are assigned to one of three staging categories:

(1) immediate duty elimination;

(2) five equal annual cuts of 20 percent per year; and,

(3) ten equal annual cuts of 10 percent per year. Article 401 also provides that tariffs can be reduced faster if the parties agree.

Section 201(a) authorizes the President to proclaim such modifications or continuance of any existing U.S. duty, continuance of existing duty-free or excise treatment, or such additional duties as he determines to be necessary or appropriate to carry out U.S. obligations under Article 401 and the schedule of duty reductions.

Subsection (b) provides the President authority, subject to the consultation and layover requirement, to proclaim such additional modifications as are agreed to with Canada regarding the staging of tariffs, as well as such modifications or continuance of any existing duty, continuance of existing duty-free or excise treatment, or additional duties as the President determines are necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada. This provision allows the Administration to continue negotiations with Canada to accelerate or delay the staging of tariff cuts on particular items, and to implement those changes after consultation with the industry, the ITC, and the Congress. The Committee intends for the President to use this authority aggressively where appropriate, and to seek accelerated duty elimination in cases in which it will help achieve the full benefits of trade liberalization for domestic industry, for example, with regard to offshore oil rigs, coated abrasives, and structural steel. In addition, by allowing the President to proclaim changes to maintain the general level of reciprocal and mutually advantageous concessions, this section establishes a mechanism for ensuring that the United States can effectively respond in the event of failure by Canada to honor its obligations under the Agreement.

Section 201(c) encourages the President to facilitate the preparation and implementation of common U.S.-Canada performance standards for the use of softwood plywood and other structural panels in construction applications. The President is required to report to the Congress on the incorporation of common performance standards into building codes in both countries and may implement the provision of Article 2008 of the Agreement when he determines that the necessary conditions have been met. Any tariff reduction made under this provision must be in equal annual increments ending January 1, 1998, unless those reductions begin after January 1, 1991.

The purpose of section 201(c) is to address what the Committee believes is the failure of Canada correctly to carry out Article 2008 of the Agreement and an exchange of letters between the two Governments dated January 2, 1988. The two countries agree that the Canadian Mortgage and Housing Corporation (CMHC) would, by March 15, 1988, evaluate U.S. C–D grade plywood to determine whether to approve its use in the construction of CMHC-financed housing. The exchange of letters provides that if CMHC does not approve such use, a panel of experts acceptable to both countries is to review the CMHC's findings. If the panel agrees with the CMHC, the two countries are to begin tariff reductions on January 1, 1989 for plywood tariff categories. If the panel does not agree or its review is not completed by January 1, 1989, Article 2008 permits the United States to delay the implementation of tariff cuts for the affected products pending agreement of the countries on a satisfactory resolution of the issue. Canada is given a reciprocal right to delay implementation of cuts on similar products if the United States exercises its right to do so.

Instead of following Article 2008's mandate to evaluate C-D grade plywood to decide whether to approve its use in CMHC-financed housing, on March 10, 1988, the CMHC simply determined that U.S. C-D grade plywood did not meet CMHC's existing plywood standards. In light of this failure to fulfill the mandate of Article 2008, section 201(c) contemplates the joint development of common U.S. and Canadian performance standards on plywood. Once the President determines the United States and Canada have taken the necessary steps to incorporate common performance standards into their respective building codes, he is authorized to implement the provisions of Article 2008.

Rules of Origin (Section 202)

Section 202 deals with the vital issue of rules of origin for goods covered by the Agreement. The preferential tariff treatment granted by the Agreement is intended to be accorded only to goods originating in the United States or Canada. The rules of origin, set forth in Chapter 3 of the Agreement, are designed to ensure that goods of third countries will not benefit from the Agreement. In addition, the rules of origin define what goods are covered by other provisions of the Agreement and this bill that apply only to goods that originate in Canada or the United States (for example, the emergency action provisions applicable only to imports from Canada).

Sections 202(a) through (c) and (f) closely tracks the provisions of Agreement Articles 301, 302, 304 and the interpretation section of Annex 301.2. It, therefore, provides direct legislative implementation of these provisions into U.S. law. Generally speaking, to be eligible for preferential duty treatment under the Agreement, goods must be wholly produced in the United States or Canada, or (if they contain third-country materials or components) must have undergone a transformation through further processing or assembly in either or both countries sufficient to result in a designated change in tariff classification specified in Annex 301.2 of the Agreement. In addition, with respect to assembled products, at least 50 percent of the cost of manufacturing the goods must be attributable to U.S. or Canadian material or the direct cost of processing in the United States or Canada.

Section 202(a) further follows Article 301 by providing that goods may not be considered to originate in the United States or Canada simply by having undergone simple packaging or combining operations; dilution with water or another substance that does not materially alter the characteristics of the goods; or any process designed solely to circumvent the rules of origin. In addition, subsection (b) deals with transshipment of goods through a third country, providing that, to remain Agreement-eligible, goods of Canada or the United States must not have undergone any operation other than unloading, reloading, or any other operation necessary for transportation or preservation and the documentation must show the territory of the other party as the final destination.

Subsection (d) authorizes the President to implement by proclamation the section of Annex 301.2 entitled "Rules," which establishes the specific rules for determining whether a third-country article has undergone sufficient change in the United States or Canada to qualify under the Agreement because of change in coverage under the Harmonized System. Subject to the consultation and layover rules, the President is authorized to proclaim modifications of these rules agreed to with Canada in the future.

Subsection (e) contains specific authority for the President to proclaim such modifications to the definition of Canadian articles covered by the Automotive Products Trade Act of 1965 as are necessary to conform that definition with the Agreement's rules of origin. It also specifies that for purposes of administering the value requirement for motor vehicles (see discussion of section 304 below), the Secretary of the Treasury shall prescribe regulations governing the averaging of the value content of vehicles of the same class, or of sister vehicles, assembled in the same plant as an alternative to the calculation of the value content of each vehicle separately.

Subsection (g) is a special provision governing application of the rules of origin to certain apparel products. Under section XI of Annex 301.2 of the Agreement, apparel products are not to be considered products of Canada or the United States, and thus eligible for duty-free treatment, unless they are produced in one or both countries from fabric also produced in one or both of the countries. However, there is an exception to this rule providing a tariff rate quota for apparel produced in the United States or Canada from fabric produced in a third country. Under this exception, such apparel qualifies for preferential duty treatment up to specified annual quantities. Any additional imports will be subject to duty at the MFN rate.

Subsection (g) facilitates implementation of this tariff rate quota by authorizing the Secretary of Commerce to issue regulations governing the exportation to Canada of apparel products that are produced in the United States from fabric produced in a third country. The purpose of this provision is to allow the Secretary to require export licenses for apparel subjct to the tarifff rate quota if he determines that such licenses are necessary to better monitor this trade. Such licenses would enable the Secretary to allocate the quota and ensure that U.S. exporters are provided the full benefits of the quota by Canada.

Customs User Fees (Section 203)

Section 203 implements the provisions of Article 403 of the Agreement, which forbids either country from introducing customs user fees with respect to goods originating in the other country and requires, with respect to the existing U.S. user fees, a five-year phased elimination beginning on January 1, 1990. Thus section 203 amends section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 to make it consistent with this provision of the Agreement. In order to ensure that fees paid on imports of other countries not subsidize the processing of Canadian imports that are exempted from the fee, this section also provides that exempted services may not be funded out of the Customs User Fee Account.

The restrictions on funding for services with regard to goods exempt from the *ad valorem* fee apply only to that fee, and do not extend to the passenger and conveyance fees established by the Consolidated Omnibus Budget Reconciliation Act of 1985. As such, overtime inspectional services and pre-clearance services concerning goods exempt from the *ad valorem* fee may be funded from passenger and conveyance fees.

Furthermore, inasmuch as the portion of the user fees required to reimburse a customs appropriations for overtime inspectional services or pre-clearance services are not deposited in the Customs User Fee Account, such fees should not be construed to be subject to the restrictions discussed herein placed on fees in that account.

Drawback (Section 204)

Under existing section 313 of the Tariff Act of 1930, when articles made in the United States incorporating imported materials or components are exported, the exporter is entitled to a drawback, or refund, of 99 percent of the amount of the duties paid on the imported component. Article 404 of the Agreement forbids the application of duty drawback on exports between Canada and the United States as of January 1, 1994, subject to limited exceptions. This provision applies a similar rule to foreign trade zones, so that goods exported from a zone to the other party are subject to the applicable customs duties of the exporting party as if the goods were withdrawn for domestic consumption. The exceptions include goods transported under bond for export to the other party or exported in the same condition as when imported in the territory of the first party, as well as goods originally exported from one party to the other and then re-exported to the original exporting party. In addition, the Agreement specifically permits continued application of drawback on imported citrus products and fabric imported from a third country and made into apparel that is subject to the MFN tariff rate (see discussion above regarding section 202(g)). Finally, the parties may agree to delay the effective date of elimination of drawback until a date subsequent to January 1, 1994.

Section 204(b) implements Article 404 by authorizing the President to identify by proclamation those goods that remain eligible for drawback and, if agreed to with Canada, to proclaim a delay in the effective date of Article 404. Section 204(c) makes conforming amendments to provisions of current law dealing with bonded manufacturing warehouses, bonded smelting and refining warehouses, drawback, manipulation in warehouse, and foreign trade zones.

Enforcement (Section 205)

Section 205 is intended to provide a mechanism for enforcement of the rules of origin and to deter fraudulent claims designed to circumvent those rules. It implements the provisions of Annex 406 of the Agreement, which allows each party to require an importer of goods from the other party to submit a declaration of origin based upon a written certification from the exporter. Annex 406 further requires that each party make it unlawful for the exporter to provide a false certification of origin in the declaration, and that this unlawful act shall have the same legal consequences as a violation of its laws with respect to making a false statement or representation.

Section 205(a) requires that any person who certifies in writing that goods exported to Canada satisfy the Agreement's rules of origin must provide a copy of that certification upon request of any U.S. Customs Service official. Failure to provide a copy of a certification is punishable by a civil penalty not to exceed $10,000. An exporter who certifies falsely that exports meet the rules of origin shall be liable for the same civil penalties provided under section 592 of the Tariff Act of 1930 for acts of customs fraud, gross negligence and negligence. All procedures and penalties applicable to a violation of section 592 apply to false certifications under section 205(a). In addition, subsection (b) amends section 508 of the Tariff

Act of 1930 to require an exporter of merchandise to Canada to make, keep and render for examination and inspection any records pertaining to the exportation, including the certification of origin required by subsection (a). Failure to retain such records is punishable by a civil penalty not to exceed $10,000.

Exemption From Lottery Ticket Embargo (Section 206)

As required by Annex 407.5 of the Agreement, section 206 amends section 305 of the Tariff Act of 1930 to eliminate, as of January 1, 1993, the existing ban on the importation of lottery tickets, printed paper that may be used as a lottery ticket, or advertisement of any U.S. lottery printed in Canada.

Exercise of GATT Rights Regarding Production-Based Duty Remission Programs With Respect to Automotive Products (Section 207)

Article 1002 of the Agreement prohibits Canada from granting production-based waivers of otherwise applicable duties regarding automotive products to any companies other than those listed in Part 3 of Annex 1002.1 (existing Canadian production-based duty remission programs grant foreign-owned vehicle manufacturers that use Canadian-built parts in their assembly operations in Canada a rebate of duties on vehicles and parts they import into Canada). In addition, such waivers must terminate not later than January 1, 1996, or an earlier date specified in existing agreements between Canada and the recipient of a waiver. Nothing in this provision waives U.S. rights or Canadian obligations under the GATT.

Section 207 requires the USTR to undertake a study to determine whether any of the Canadian production-based duty remission programs on automotive products is either inconsistent with, or denies the benefits to the United States under, the GATT, or is being implemented inconsistently with Canada's obligations under the Agreement not to expand the extent of such programs or to extend their duration. Based on this study, USTR is to determine whether to initiate an investigation under section 302 of the Trade Act of 1974. No later than June 30, 1989 (extendable to September 30, 1989 if the USTR considers an extension necessary), USTR shall submit a report to Congress on the results of the study, including a description of the basis used for measuring and verifying compliance with the obligations of the Agreement, and any determination made on whether to conduct an investigation, and the reason for the determination. Notwithstanding submission of the report, USTR will have a continuing obligation to monitor the degree of Canadian compliance with its obligations under the Agreement.

TITLE III—APPLICATION OF AGREEMENT TO SECTORS AND SERVICES

Agriculture (Section 301)

Article 702 of the Agreement contains a special provision that, notwithstanding the obligation to eliminate bilaterial tariffs, allows either the United States or Canada to apply a temporary duty on certain fresh fruits and vegetables. This provision may be invoked for a period of 20 years after the Agreement's entry into effect. No duty imposed may cause the total duty on such products to exceed the lesser of the MFN duty that was in effect for the corresponding season prior to the Agreement or the then-current MFN duty. (Since this provision on duties sounds in the jurisdiction of the Committee on Finance, the Committee has reported on it here. Other provisions on agriculture in the Agreement are within the jurisdiction of the Committee on Agriculture, Nutrition, and Forestry, and that Committee's report, infra., reports with respect to those provisions.)

Section 301(a) implements this provision of the Agreement. It authorizes the Secretary of Agriculture to recommend to the President the imposition of a temporary duty on any of certain specified Canadian fruits or vegetables if the following conditions apply:

(1) For each of five consecutive working days the import price of the Canadian product is below 90 percent of the corresponding five-year average monthly import price for the product; and,

(2) The planted acreage in the United States for the product is no higher than the average planted acreage over the preceding five years, excluding the years with the highest and lowest acreage.

The Secretary is required promptly to publish in the Federal Register his determination that the conditions are satisfied. In determining whether to recommend imposition of a duty, the Secretary is to consider whether the specified conditions have led to a distortion in bilateral trade and, if so, whether imposing the duty is appropriate, including consideration of whether it would significantly correct the distortion.

The President is required to determine whether to impose the duty within seven days after receipt of the Secretary's recommendation. In making his determination, he may take into account the national economic interests of the United States. Any duty imposed shall be temporary, and must terminate by the earlier of:

(1) The day following the last of five consecutive working days in which the point of shipment price in Canada for the product concerned exceeds 90 percent of the corresponding five-year average monthly import price; or,

(2) The 180th day after the date on which the temporary duty first took effect. No such temporary duty may be imposed on any product that is subject to import relief under the provisions of sections 201 through 203 of the Trade Act of 1974. The authority to impose duties is subject to the same MFN-rate limitations imposed by Article 702 of the Agreement, and terminates on the 20th anniversary of the entry into force of the Agreement.

Section 301(b) implements Article 704 of the Agreement, dealing with market access for meat. Article 704 generally prohibits either party from imposing quantitative import restrictions or equivalent measures on meat goods originating in the other party. An exception to this rule applies when a party imposes a restriction on meat imports from all third countries and the other country does not take equivalent action. In that case, restrictions may be imposed on imports from the other party only to the extent and for such period of time as is sufficient to prevent frustration of the action taken on third-country imports.

Section 301(b) amends the Meat Import Act of 1979 to delete Canadian imports from the calculation of the quantity of imported meat articles that will trigger imposition of quantitative restrictions under the Act. It also adjusts the minimum quota amount to reflect the removal of Canadian imports from the calculation. Finally, it authorizes the President to impose restrictions on Canadian imports, consistent with the Agreement, when Canada has not similarly imposed restrictions and the action is necessary to prevent frustration of the limitations placed on third-country imports. The Committee expects this provision to be invoked whenever it appears that imprts of meat goods from Canada are increasing significantly as a result of the displacement of those goods in the Canadian market by increasing third-country imports.

Relief From Imports (Section 302)

Because of concern about the impact of trade liberalizing agreements on U.S. industries and workers, trade agreements to which the United States is a party generally include an "escape clause" whereby the obligations of the agreement may be temporarily suspended in certain circumstances. Consistent with this policy, Chapter 11 of the Agreement includes an "escape clause" allowing emergency action by either party should an increase in imports from the other party cause serious injury to a domestic industry. Chapter 11 also details how imports from the other party will be treated in situations where a party takes emergency action on a global basis. Section 302 of the legislation sets forth the rules and procedures for implementing both these aspects of the Agreement.

(a) *Relief from imports from Canada.*—Section 302(a) establishes the mechanism whereby domestic industries may obtain relief from serious injury substantially caused by increased imports from Canada. In many respects, the mechanism parallels Chapter 1 of Title II of the Trade Act of 1974 but was designed as a separate and streamlined mechanism that would be better suited to respond to the needs of domestic industries that may be injured by duty reductions under the Agreement. At the same time, the legislation fully reflects the obligations assumed by the United States under Article 1101 of the Agreement.

Subsection (a)(1) provides that petitions for emergency action for the purpose of adjusting to U.S. obligations under the Agreement may be filed with the ITC by an entity which is representative of an industry. As under section 201 of the Trade Act of 1974, the term "entity" includes a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry.

Subsection (a)(2) requires the ITC, upon the filing of a petition, to initiate an investigation to determine whether, as a result of a reduction or elimination of a duty under the Agreement, an article originating in Canada is being imported into the United States in such increased quantities, in absolute terms, and under such conditions, so that imports of such Canadian article, alone, constitute a substantial cause of serious injury to the domestic industry producing an article like, or directly competitive with, the Canadian article.

The legislation adopts by reference appropriate provisions of section 201 of the Trade Act of 1974 regarding the ITC's injury investigation, i.e., those relating to the determination of the domestic industry, the economic factors that the ITC is to take into account in making its injury determination, certain relevant definitions, and the requirement that the ITC notify the appropriate agency should it have reason to believe that increased imports are attributable to unfair trade practices. The legislation also adopts the requirement under section 201 that the ITC hold public hearings and afford interested parties an opportunity to present evidence.

Subsection (a)(2) also requires the ITC to make its injury determination within 120 days of initiating an investigation and to submit a report to the President within 30 days thereafter on its determination and, if appropriate, its recommendation on the amount of import relief necessary to remedy the injury. The ITC's remedy recommendation is limited to the actions that the President is authorized to take under this subsection with respect to imports from Canada.

Subsection (a)(3) requires the President, upon receiving an affirmative determination from the ITC, to provide relief from the imports that are the subject of such determination to the extent that, and for such time (not to exceed three years) as, the President determines necessary to remedy the injury, unless the President determines that such relief is not in the national economic interest. In accordance with the Agreement, the relief the President may provide is limited to:

(1) Suspending further duty reductions provided under the Agreement;

(2) Increasing the duty to a level not to exceed the lesser of the MFN rate of duty in effect on imports from other countries at the time such action is taken or the MFN rate of duty in effect immediately prior to entry into force of the Agreement; or

(3) In the case of a seasonal duty, increasing the duty to a level not to exceed the MFN rate of duty in effect for the corresponding season immediately prior to entry into force of the Agreement.

Consistent with the Agreement, action under this section may only be taken once with respect to any article and is authorized only during the 10-year period after entry into force of the Agreement. Subsection (a)(5) authorizes the President to provide compensation to Canada for import relief actions taken pursuant to this section.

(b) *Treatment of Canadian articles under section 201 investigations.*—Section 302(b) implements the obligations assumed by the United States under Article 1102 of the Agreement to give special treatment to imports from Canada in import relief proceedings under Chapter 1 of Title II of the Trade Act of 1974. Should imports from Canada be excluded from any import relief action under Chapter 1, this section also establishes the authority of the President subsequently to include imports from Canada in such action.

Subsection (b)(1) sets forth an additional determination that shall be made by the ITC in any import relief investigation under Chapter 1. If the ITC makes an affirmative determination that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to a domestic industry, the ITC shall also find whether imports from Canada of such article are substantial and are contributing importantly to such injury or threat thereof. Reflecting Article 1102 of the Agreement, the legislation provides that the ITC shall not normally consider imports from Canada in the range of 5 to 10 percent or less of total imports from all sources of such article to be substantial and that the term "contributing importantly" means an important cause, but not necessarily the most important cause, of the serious injury or threat thereof caused by imports.

Under subsection (b)(2), the President is required, in determining whether to provide import relief, to make essentially the same determination that is required of the ITC under subsection (b)(1), i.e., whether imports from Canada are substantial and contributing importantly to the serious injury or threat thereof found by the ITC. The Committee expects that the President will take into accunt the ITC's finding in making this determination. If the President determines that imports from Canada are not substantial and contributing importantly to such injury, the President is required to exclude imports from Canada from any import relief measures taken with respect to imports from other sources.

If the President acts under subsection (b)(2) to exclude imports from Canada from any import relief measures taken with respect to imports from other countries, he is authorized under subsection (b)(3) to take appropriate action to include imports from Canada in such action should he determine that a surge in imports from Canada is undermining the effectiveness of the import relief measures. Consistent with the Agreement, the term "surge" is defined to mean a significant increase in imports over the trend for a reasonably recent base period for which data are available.

The legislation also establishes the right of private entities to petition the ITC to investigate whether a surge in imports from Canada undermines the effectiveness of any import relief measures. Any entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry may request the ITC to conduct such an investigation. The ITC shall submit its finding to the President no later than 30 days after receiving such a request. This provision was designed to allow industries that believe that imports from Canada are frustrating the purpose of import relief actions under Chapter 1 to petition for independent analysis of the effect of such a surge. It is not meant as a constraint on the President's basic authority under this subsection to include imports from Canada in import relief measures subsequent to their initial imposition. That authority exists, regardless of whether the ITC has conducted an investigation pursuant to a petition from the industry.

Section 302(c) provides that petitions under section 201 of the Trade Act of 1974 for relief from imports from all sources and petitions for relief from imports from Canada under section 302(a) of this legislation may be submitted at the same time. If they are submitted at the same time, the ITC shall consider them jointly. The purpose of this provision is to avoid a situation whereby the ITC would be investigating the same imports simultaneously in two separate investigations, thereby duplicating its work. The provision is consistent with section 603 of the Trade Act of 1974 which authorizes the ITC to consolidate proceedings before it.

Acts Identified in the National Trade Estimate (Section 303)

Section 303 amends section 181 of the Trade Act of 1974, which requires the USTR to issue an annual national trade estimate that, among other things, identifies and analyzes foreign trade barriers and trade distortions and estimates their impact on U.S. commerce. Section 303 specifically requires that, with regard to Canadian trade practices, the report include information regarding any action taken by the United States under section 301 of the Trade Act of 1974 (including resolution through appropriate dispute settlement procedures); action taken under section 307 of the Trade and Tariff Act of 1984; multilateral or bilateral negotiations or consultations; or the reasons that no action was taken.

The purpose of the amendment is twofold:

(1) To acknowledge that some important Canadian acts, policies, or practices which restrict the export of U.S. goods, services, and investment remain after implementation of the Agreement; and,

(2) To use the National Trade Estimate as a report card to reflect the adequacy and enforcement of the Agreement, as well as a resource in establishing priorities for future market-opening activities.

In the area of investment, the Agreement makes important strides toward liberalization of Canada's extensive investment restrictions. Nevertheless, certain key restrictions—such as the screening of direct acquisitions above a certain threshold and a number of performance requirements (research and development, technology transfer, and licensing)—remain in force. The Committee is concerned about the precedent that failure to deal with these restrictions may create for the Uruguay Round of Multilateral Trade Negotiations and encourages negotiators to aggressively pursue the elimination of all such remaining barriers.

Because screening of direct acquisitions in Canada continue to be permitted, it will be impossible for American companies subject to hostile takeover attempts by Canadian interests to respond with counter-attempts. While this is no worse than the current situation, nevertheless it is an unfortunate disadvantage, especially given the current business climate which is highly conducive to takeovers of U.S. firms.

The exemption of Canada's cultural industries from coverage under the Agreement also perpetuates inequities in investment opportunities between the two economies. For example, it has come to the attention of the Committee that a significant number of newspaper publishing firms, especially throughout the mid-west, have been purchased recently by Canadian concerns. American firms simply do not enjoy a reciprocal opportunity in Canada, and, in fact, the Canadians have retained the right to require the divestiture of any "cultural" subsidiary of a firm when it is acquired by a foreign interest. While the Committee is sensitive to Canadian concerns about preserving its cultural identity, nevertheless it is anticipated that the United States will aggressively enforce its rights against any such practices which are purported to have been undertaken for reason of "cultural sovereignty" but which are, in fact, actionable under U.S. law. Negotiators should pursue, at minimum, a scaling back of the highly protective investment and other barriers that impede access to Canadian cultural industries.

The Agreement generally does not affect the ability of U.S. businesses to seek action under section 301 of the Trade Act of 1974, if the Canadian Government exercises its remaining ability to restrict U.S. exports of goods, services, or investment. The Committee believes that a pattern or practice of such activity would be inconsistent with the purposes of the Agreement. The Committee expects that authority to act against such practices will be utilized no less aggressively than it would have been absent the Agreement.

Negotiations Regarding Certain Sectors; Biennial Reports (Section 304)

Section 304 contains several provisions dealing with the general subject of continuing negotiations and consultations with Canada and related matters. This section reflects the belief of the Committee that, while the Agreement achieves a significant liberalization of bilateral trade, much more can be accomplished in future negotiations to eliminate additional trade barriers and distortions not addressed, in whole or in part, by the Agreement.

Subsections (a) and (b) provide authority to the President to conduct negotiations with Canada on liberalizing trade in services in accordance with Article 1405 of the Agreement; liberalizing investment rules; improving the protection of intellectual property rights; increasing the value requirement for determining whether an automotive product originates in Canada or the United States; and liberalizing procurement practices, particularly with regard to telecommunications; and establishes negotiating objectives for these efforts.

The President is required to consult with appropriate private sector interests or advisory committees in conducting these negotiations. The Committee expects that all such negotiations be consistent, to the extent appropriate, with multilateral efforts now underway in the GATT Uruguay Round and the objectives for those negotiations declared in legislation authorizing them. The specific listing of these subjects for negotiation is not intended to be all-inclusive, nor to preclude the President from conducting any further negotiations or consultations with Canada on other appropriate matters, in consultation with appropriate Committees in Congress.

With regard to the procurement negotiations authorized by this section, the Committee intends that, particularly with regard to trade in telecommunications, the objective of such negotiations is to liberalize procurement practices not only of the Government of Canada, but of entities controlled and, if appropriate, regulated by the Government, for the purpose of obtaining open market access for U.S. suppliers. In Canada, unlike many foreign countries in which the public telephone system is operated by a government agency, government control over procurement is exercised indirectly through a regulatory agency. This provision authorizes negotiations to obtain assurance from Canada that Canadian telephone operating companies would provide non-discriminatory access by U.S.

manufacturers to their procurement market. The Committee expects that mandates and authorities contained in the telecommunications provisions of the Omnibus Trade and Competitiveness Act of 1988 will be instrumental in achieving these objectives.

Subsection (c) sets out objectives for negotiations with Canada to increase the value requirement applied for purposes of determining whether an automotive product is treated as originating in Canada or the United States for purposes of the rules of origin under the Agreement. In order to be accorded preferential treatment under the Agreement, at least 50 percent of the value of an automotive product must be accounted for by materials originating in the United States or Canada, or both, plus the direct cost of processing performed in one or both of the countries. The objective of negotiations is to raise this percentage, with a goal of seeking to conclude an agreement by January 1, 1990, increasing the percentage to at least 60 percent. The President is strongly encouraged to conclude an agreement by that date, but this provision permits an agreement by an earlier or later date or agreement on a different percentage than 60 percent. The President is authorized to proclaim any negotiated increase in the value requirement through January 1, 1999.

Subsection (a)(2) requires immediate consultations to obtain the exclusion from the transport rates established under Canada's Western Grain Transportation Act of agricultural goods that originate in Canada and are shipped via east coast ports for consumption in the United States.

Subsection (d) authorizes the President, during the five-year period beginning on the date of enactment, to negotiate with Canada to seek agreement to impose bilateral import and export limitations on potatoes. USTR and the Secretary of Agriculture are directed to consult with, and to solicit the views of, representatives of the potato-producing industry with regard to these negotiations. The subsection also authorizes any necessary or appropriate actions to ensure the attainment of the objectives of any agreement that is reached and to enforce any quantitative limitation or other restriction that is contained in the agreement.

Subsection (e) establishes a mechanism for protecting certain U.S. rights guaranteed by Article 1205 of the Agreement. Article 1203 exempts Canada from all requirements and obligations of the Agreement with regard to export controls on unprocessed fish pursuant to statutes of certain of Canada's eastern provinces. At the same time, under Article 1205 the parties specifically retain all rights and obligations they have under the GATT pertaining to matters exempted under Article 1203. Thus, although the United States has waived its right to challenge these provincial measures under the Agreement, it has retained its right to do so under the GATT.

Subsection (e) requires the President to take appropriate action to enforce U.S. GATT rights within 30 days of Canadian imposition of export controls on unprocessed fish under statutes exempted by Article 1203 or the application of any requirement that fish caught in Canadian waters be landed in Canada. The President is given discretion to seek a dispute resolution proceeding in the GATT, retaliate against the practice, seek direct consultations with Canada to resolve the dispute, refer the matter for resolution under procedures established in the Agreement, or to take any other appropriate action.

Section 304(f) requires the President to submit to the Congress a biennial report on the status of negotiations authorized under section 304; the effectiveness and operation of any agreement entered into under section 304; the effectiveness of operation of the Agreement generally; and any actions taken by the United States and Canada to implement further the objectives of the Agreement.

Energy (Section 305)

Article 902, paragraph 4, of the Agreement provides: "In the event that either Party imposes a restriction on imports of an energy good from third countries, the Parties, upon request of either Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing and distribution arrangements in the other Party." Although a more generic provision appears at Article 407, paragraph 4, within the chapter on Border Measures, its inclusion in the Agreement grew out of the energy negotiations, in particular discussions with respect to petroleum. (Since this provision concerns fees, duties and restrictions on imports, the Committee on Finance has reported with respect to it here. The full report of the Committee on Energy and Natural Resources also relates to these provisions, infra.)

Under the Agreement, the United States generally is obliged to exempt petroleum of Canadian origin from fees which in the future might be imposed on imports of foreign petroleum. If such import fees were imposed by the United States without Canada's adopting comparable import fees, however, an exemption for Canada from the U.S. fees would tend to draw increased quantities of Canadian crude oil and refined products into the U.S. market. This is because the U.S. fees would cause the prices of crude and refined products in the U.S. market to rise above the levels prevailing in Canada, allowing crude producers or resellers in Canada's western provinces, as well as refiners and product marketers in eastern Canada, to enjoy increased profits by diverting their goods from Canada to the U.S. market. This diversion would be particularly anticompetitive if Canada were the only country exempt from a U.S. import fee.

Such diversions in large quantities, whether of petroleum or of other goods subject to third-country restriction, could be disadvantageous to both countries, diminishing supplies and driving up prices in Canada, and artificially creating price disadvantages for competing U.S. suppliers. The negotiators were unable to arrive at a mutually acceptable mechanism to be explicitly included in the Agreement, in part because of the wide range of situations in which the issues could arise involving various kinds of third-country import restraints imposed by either country, and potentially involving many different kinds of goods.

The urgency of resolving these issues may differ somewhat from one situation to another. Moreover, although the current Administration is opposed to oil import fees, future Administrations may have a different view. Therefore,it is the intent of the Committee, with respect to any future oil import fees from which Canadian crude oil or refined products are exempted, that the United States request consultations under Article 902, paragraph 4 of the Agreement to avoid distortions in pricing, marketing and distribution arrangements, as soon as it appears likely that the United States will impose oil import fees, and in no event more than seven days after such imposition. Consultations shall be conducted expeditiously, and the Administration shall make every effort to reach a mutually satisfactory solution within 30 days. If the parties prove unable to reach an agreement on a solution, unilateral actions shall be taken by the Administration to avoid distortions and protect and enhance competition; and could be subject to the dispute resolution provisions of Chapter 18 if Canada believed such actions were inconsistent with the Agreement.

Government Procurement (Section 306)

Section 306 is in the jurisdiction of the Committee on Governmental Affairs, and is discussed in that Committee's report, infra.

Temporary Entry for Business Persons (Section 307)

The Committee on the Judiciary, to which the bill was referred, conducted consultations with the Administration to develop provisions to implement the immigration provisions of the Agreement. For this reason, the Committee on Finance incorporates the views of the Committee on the Judiciary as the Senate report on section 307.

Immigration and Nationality Act (INA) (New Section 214(e))

The Committee intends that the definition and treatment of business persons engaged in business activities at a professional level under the proposed new section 214(e) of the INA are applicable solely to section 214(e), and are considered to have no bearing upon any other nonimmigrant or immigrant category, including INA sections 101(a)(15)(H)(1) and 203(a)(3).

Schedule 2 to Annex 1502.1

The Committee intends that admissions to the United States under Schedule 2 shall be limited solely to business persons described therein entering to engage in business activities at a professional level.

The Committee also intends for the future that the Committee on the Judiciary be consulted prior to any changes in Schedule 2, consistent with the Statement of Administrative Action.

Retention of Existing Definitions

The Committee intends for purposes of the Agreement that existing terms and definitions apply, other than those which alteration is required to comply with the specific terms of the Agreement. Of particular concern are existing terms such as "essential skills" (related to Traders and Investors) and "specialized knowledge" (related to Intra-Company Transferees), which are specifically defined by current law and practice.

The Committee also intends that the reasoning of *Bricklayers and Allied Craftsmen* v. *Meese*, 616 F.Supp. 1387 (N.D. Cal. 1985), with regard to the proper scope of the B visa category, guide the application of Annex 1502.1, Part A, and Schedule 1 of the Agreement. An application consistent with the *Bricklayer's* decision is particularly essential in the absence of a petition requirement for the B visa category.

The Committee intends that neither the Agreement, Annex 1502.1, Part A, and its Schedule 1, Distribution, nor the implementing legislation alter or amend current law under the INA regarding Canadian-based transportation operators.

The Committee intends that under the Agreement the exclusion provisions contained in section 212(a) and the deportation provisions contained in section 241 of the INA apply.

Section 5136 of Revised Statutes (Section 308)

Section 308 is in the jurisdiction of the Committee on Banking, Housing, and Urban Affairs, and is discussed in that Committee's statement, infra.

Steel Products (Section 309)

Section 309 establishes that nothing in the bill precludes any discussion or negotiation between the United States and Canada in order to conclude voluntary restraint agreements or mutually agreed quantitative restrictions on the volume of steel products entering the United States from Canada.

TITLE IV—BINATIONAL PANEL DISPUTE SETTLEMENT IN ANTIDUMPING AND COUNTERVAILING DUTY CASES

Chapter 19 of the Agreement establishes a mechanism for resolving disputes between the United States and Canada with respect to antidumping and contervailing duty cases. The central feature of the mechanism is the replacement of domestic judicial review of determinations in antidumping and countervailing duty cases involving imports from the other party with review by binational panels. Title IV amends U.S. law to implement Chapter 19 by limiting judicial review in cases involving Canadian merchandise, establishing procedures whereby private parties may appeal for binational panel review, providing an organizational structure for administering U.S. responsibilities under Chapter 19 and making other conforming amendments to U.S. law.

Chapter 19 of the Agreement also contemplates future discussions between the United States and Canada on a substitute system of rules dealing with subsidies and unfair pricing practices. Under Article 1907 of the Agreement, the United States and Canada agreed to establish a working group with a mandate to develop such a system. With this in mind, Title IV of the legislation sets forth objectives for future discussions between the United States and Canada on these issues, and procedures for consideration of any agreement reached as a result of such discussions. Furthermore, the legislation establishes a mechanism to assist industries that may face increased competition from subsidized imports prior to agreement on a more effective system of rules to discipline government subsidies.

Amendments to Section 516A of the Tariff Act of 1930 (Section 401)

Under Article 1904 of the Agreement, both parties agreed to replace judicial review of final antidumping and countervailing duty determinations with binational panel review. Article 1904 sets forth the rules and procedures for binational panel review as well as detailing certain domestic laws of each party that must be amended to achieve the obligations of the article. Article 1904 further provides in paragraph (13) for an extraordinary challenge procedure as a safeguard against some unforeseen impropriety or gross error of law or procedures that could threaten the integrity of the binational panel review process.

In U.S. law, the right of interested parties to judicial review of antidumping and countervailing duty determinations having a final effect is established under section 516A of the Tariff Act of 1930. It provides for review of such determinations in the U.S. Court of International Trade (CIT). CIT decisions in turn may be appealed to the U.S Court of Appeals for the Federal Circuit, and by certiorari to the U.S. Supreme Court. Section 401 amends section 516A to prohibit judicial review under section 516A of antidumping and countervailing determinations involving Canadian merchandise, subject to certain exceptions, and, alternatively, to provide for binational panel review.

Section 401(c) constitutes the core of these amendments, adding a new subsection (g) to section 516A. New subsection (g) sets forth the rules and procedures for review of antidumping and countervailing duty determinations in which the class or kind of merchandise is Canadian, as determined by the administering authority (currently, the Department of Commerce).

Paragraph (1) of section 516A(g) defines the determinations made by the Department of Commerce and the ITC that are subject to binational panel review. The subject determinations, as defined under Article 1911 of the Agreement, are:

(1) Final determinations by the Department of Commerce or the ITC under section 705 or 735 of the Tariff Act of 1930;

(2) Determination by the Department of Commerce or the ITC under section 751 of the Tariff Act of 1930; and,

(3) Determinations by the Department of Commerce as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing antidumping finding or antidumping or countervailing duty order.

Paragraph (2) of section 516A(g) establishes the general rule that the determinations described in paragraph (1) are not subject to review under section 516A, or otherwise subject to judicial review, if binational panel review of a determination is requested pursuant to, and within the time limits described under, Article 1904 of the Agreement.

Exceptions to binational panel review.—Paragraph (3) of section 516A(g) sets forth the exceptions to the general rule established in paragraph (2). These exceptions are consistent with articles 1904(11) and (12) of the Agreement. Section 516A(g)(3)(A) provides that determinations described in paragraph (1) are reviewable under section 516A(a) in the following circumstances:

(1) Neither the United States nor Canada requests binational panel review of the determination;

(2) The determination is issued as a direct result of judicial review commenced pursuant to section 516A(a) in a case where neither the United States nor Canada requested binational panel review of the original determination; or,

(3) The determination is issued as a direct result of judicial review commenced pursuant to section 516A(a) prior to entry into force of the Agreement.

Section 516A(g)(3)(B) sets forth the rule for permitting judicial review under the exception described in paragraph (1), i.e., where neither country requests binational panel review. A determination described in paragraph (1) is reviewable in such circumstances only if the party seeking to commence review under section 516A(a) provides timely notice of its intent to commence such review to all interested parties who were parties to the original proceeding, the Department of Commerce or the ITC (depending on which agency issued the determination at issue), and the U.S. and Canadian Secretaries. Notice must be delivered no later than 20 days after publication of the appropriate notice regarding the determination in the Federal Register or, in the case of class or kind rulings, no later than 20 days after receipt of the ruling by the Government of Canada. The purpose of the notice requirement is to give interested parties adequate time to request review by a binational panel, should they prefer that forum for review.

Review of constitutional issues.—Paragraph (4) of section 516A(g) establishes a two-track system for judicial review of constitutional issues that may arise in connection with either the implementation of Chapter 19 of the Agreement or constitutional issues arising out of an antidumping or countervailing duty determination. Paragraph (4)(A) provides a "fast-track" procedure for any constitutional challenge to the legislation's provisions implementing the binational panel dispute settlement system established under Chapter 19 of the Agreement. Under subparagraph (A), such challenges would be heard by a three-judge panel of the United States Court of Appeals for the District of Columbia Circuit. Under subparagraph (F)(i), the security requirements of Rule 65(c) of the Federal Rules of Civil Procedure would apply to such challenges. Subparagraph (H) further provides that any final judgment of the D.C. Circuit could be appealed within 10 days to the U.S. Supreme Court.

A second track for reviewing constitutional issues that arise out of the underlying antidumping or countervailing duty proceeding is provided in paragraph (4)(B) of section 516A(g). Under current law, constitutional issues are considered by the CIT in the context of judicial review of the antidumping or countervailing duty determination. Since this bill generally prohibits such review with respect to determinations involving Canadian merchandise if binational panel review is sought on a timely basis, paragraph (4)(B) was necessary to ensure that Federal courts would still be open to parties to resolve any issue of the constitutionality of a law of the United States as enacted or applied that may arise out of the underlying antidumping or countervailing duty proceeding. Subparagraph (B) provides that such review shall be heard by a three-judge panel of the CIT.

A party filing an action for review under subparagraph (B) would be required to deposit adequate security to compensate parties affected for any loss or damages incurred. Further, if the CIT upholds the constitutionality of the determination at issue, the prevailing party would be entitled to be awarded fees and expenses, as well as costs, unless the CIT finds that the position of the other party was subsequently justified or that special circumstances make an award unjust.

Section 516A(g)(4) also establishes safeguards designed to prevent frivolous constitutional challenges to antidumping or countervailing duty determinations. Under subparagraph (C), a constitutional challenge could be commenced under this paragraph only during the 30-day period following notice in the Federal Register that binational panel review of the antidumping or countervailing duty determination in question had been completed. Subparagraph (C) provides that frivolous claims brought under subparagraph (A) or (B) are subject to dismissal and sanctions as provided for under existing law, including, but not limited to, the sanctions available under Rule 11 of the Federal Rules of Civil Procedure. To prevent a constitutional challenge under this paragraph from turning into a review of a binational panel's decision, subparagraph (G) provides that the record of proceedings before the binational panel shall not be considered part of the record for review.

Liquidation of entries.—Article 1904(15)(d) of the Agreement requires that the United States and Canada amend their respective laws to ensure that existing procedures concerning the refund, with interest, of any duties operate to give effect to a final panel decision that a refund is due. Because current law establishes time limits within which entries must be liquidated, an amendment is needed to ensure compliance with Article 1904(15)(d). Paragraph (5) of section 516A(g) sets forth the manner in which entries of Canadian merchandise that are the subject of binational panel review shall be liquidated, i.e., assessed a final duty. Essentially, the provision parallels current practice with respect to liquidation of entries that are subject to judicial review under section 516A.

Implementation of panel decisions.—Paragraph (7) of section 516A(g) sets forth the manner in which the decisions of binational panels or extraordinary challenge committees shall be implemented. Because binational panels act as a substitute for U.S. courts in deciding whether a determination is consistent with U.S. law, the Committee intends binational panel decisions to be implemented in the same manner that court decisions are implemented under current law. That is, a decision by a binational panel shall be remanded to the agency that made the determination to take such action as necessary to implement the decision. Thus, the general rule set forth under subparagraph (A) is that if a binational panel, or extraordinary challenge committee, makes a decision remanding a determination to the Department of Commerce or the ITC, that agency shall, within the period specified by the panel or committee, take action not inconsistent with the decision of the panel or committee. This provision mirrors the existing remand procedures of the CIT in antidumping and countervailing duty cases.

During the process of developing this legislation, the Administration raised concerns that requiring implementation of panel and committee decisions by Government agencies might be found unconstitutional on the ground that the procedures for appointing panel and committee members are at variance with the requirements of the appointments clause of the Constitution, Article II, Section 2, Clause 2. The Committee considered alternative implementing language which would have provided the President with discretion to decide whether to implement panel or committee decisions, but rejected such language as potentially exposing the antidumping and countervailing duty process to political pressure. The Committee places great importance on preserving the objectivity of the antidumping and countervailing duty laws and insulating them, and their administrators, from undue political influence. The Committee was particularly concerned about any interference with the independence of the ITC, which is constituted as an independent agency.

The Committee does not believe that direct implementation of panel and committee decisions should or would be held unconstitutional. However, in response to the concerns raised by the Administration, paragraph (7) includes a second provision that would be effective should direct implementation of panel and committee decisions be held unconstitutional under the appointments clause. Subparagraph (B) states that, in the event that the Supreme Court finds subparagraph (A) unconstitutional, the President is authorized on behalf of the United States to accept, as a whole, the decision of a panel or committee remanding the determination to the Department of Commerce or the ITC. It further states that, upon such acceptance by the President, the Department of Commerce or the ITC, as appropriate, shall take action to implement the panel or committee decision. This provision does not authorize the President to issue any substantive instructions to either agency regarding action that should or should not be taken in response to the panel or committee decision. In the unlikely event that this provision would become operative, Presidential acceptance of the decision would simply trigger action by the Department of Commerce or ITC, as appropriate, in the same manner that such agencies respond to a remand by a U.S. court.

Requests for binational panel review.—Article 1904(2) of the Agreement provides that only the United States or Canada may formallly request binational panel review of an antidumping or countervailing duty determination. Both countries agreed, however, under Article 1904(5) that they would automatically seek such review upon the request of a person who would otherwise be entitled under the law of the importing country to commence domestic judicial review. In the case of the United States, current law allows any interested party that is a party to an antidumping or countervailing duty proceeding to seek judicial review of the resulting determinations.

To implement Article 1904(5), paragraph (8) of section 516A(g) provides that an interested party who was a party to the proceeding in which a determination is made may request binational panel review by filing a request with the United States Secretary no later than 30 days after the date the determination is published or, in the case of a scope ruling, 30 days after the date on which the Government of Canada is notified of such ruling. Receipt of such a request shall be deemed to be a request for binational panel review within the meaning of Article 1904(4) of the Agreement. Paragraph (8) also imposes certain notice requirements regarding requests for panel review. These requirements basically parallel the notice requirements under section 516A(g).

Subparagraph (C) of paragraph (8) states that, absent a request by an interested party under subparagraph (A), the United States may not request binational panel review of a U.S. determination. This provision assures that the United States cannot challenge its own determinations and was included primarily to preserve the independence of the ITC in administering those aspects of the antidumping and countervailing duty laws for which it is responsible.

Representation in panel proceedings.—Because of the interest of private parties in the outcome of binational panel reviews, the United States and Canada agreed under Article 1904(7) to provide persons who otherwise would have standing to appear and be represented in a domestic judicial review proceeding concerning the determination at issue the opportunity to appear and be represented by counsel before the panel. This agreement is implemented in paragraph (9) of section 516A(g).

Consistent with Article 1904(7) of the Agreement, paragraph (9) also establishes that the ITC and the Department of Commerce will be represented by their own employees, i.e. in-house counsel, in all proceedings before all binational panels and extraordinary challenge committees established pursuant to the Agreement.

The ITC's independent litigating authority has expressly existed since the enactment of the Trade Act of 1974. See 19 U.S.C. 1333(g). Paragraph (9) is modeled after 19 U.S.C. 1333(g), which continues to govern all judicial proceedings. Thus, no provision in this legislation is needed in order to grant the ITC authority to be represented at its option by its own attorneys in the new judicial proceedings provided for in subsections 401(c) and 403(c) of this legislation because such authority already exists. Paragraph (9) extends the ITC's independent litigating authority to all binational panel and extraordinary challenge committee proceedings.

The rationale for the ITC's litigating authority is well understood. The ITC is by statutory design an independent agency insulated from political concerns. Such insulation is in part intended to prevent determinations about injury to domestic industries due to imports from being subject to the pressures from political constituencies that historically plagued the promulgation of U.S. tariffs.

Independent litigating authority is a crucial element of the statutory scheme that preserves the ITC's independence. The ITC should not have to be concerned with whether the Department of Justice will adequately defend the ITC's position in a given case.

Conforming time limits for judicial review.—While the Agreement allows domestic judicial review of an antidumping or countervailing duty determination that is subject to binational panel review if no panel review is requested. Article 1904(15)(g)(i) of the Agreement provides that such judicial review may not be commenced until the time for requesting a panel under the Agreement has expired. To preclude this possibility, section 401(a) amends section 516A(a) by adding a new paragraph (5) that prohibits the commencing of an action under section 516A(a) until the 31st day after publication of the appropriate notice in the Federal Register or, in the case of a scope ruling, notice to the Canadian Government. Thus, the normal 30-day period for filing a summons (and 30 days thereafter, a complaint) would begin to run on such 31st day.

Notice of scope rulings.—Determinations by the Department of Commerce as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing antidumping finding or antidumping or countervailing duty order are not generally published in the Federal Register. Because such determinations may be reviewed by binational panels and are therefore subject to the filing deadlines established under Article 1904, paragraph (10) of section 516A(g) requires the Department of Commerce, upon request, to inform any interested person of the date on which the Government of Canada receives notice of such determination. The purpose of this provision is to assure that private parties are aware of the date that establishes the applicable time limits should they want to commence review of the decision, either in the U.S. courts or by a binational panel.

Effect of panel decisions on other cases—Section 401(d) of the bill adds a new paragraph (3) to section 516A(b) and is intended to clarify the effect that decisions by the binational panels will have on U.S. courts hearing antidumping and countervailing duty cases. The language of the bill makes clear that a U.S. court shall not be bound by, but may consider, a final decision of a binational panel or extraordinary challenge committee formed pursuant to Article 1904 of the Agreement. It is the intent of Congress that a binational panel decision will be binding only with respect to the particular matter before the panel and that a U.S. court's consideration of panel decisions will be limited to the intrinsic persuasiveness of the statements in those decisions. A U.S. court should view panel decisions in the same fashion as it would view statements of respected commentators on the application of U.S. law.

The binational panel process is not to effect any change in the substantive law of the United States or to provide any benefit to importers of goods from third countries. Thus, panel decisions will not be binding on the CIT, even if the same or related issues are raised in court actions reviewing determinations of the Department of Commerce or the ITC. For example, in a case where the ITC has made an affirmative injury determination on the basis of cumulating imports from Canada with imports from other countries, the CIT is to decide the case before it (concerning imports from other countries) on the record as it was before the ITC at the time the ITC made its original determination.

The outcome of a binational panel proceeding in a companion case concerning the imports from Canada that were cumulated shall have no hearing on the ITC's record or on the validity of the ITC determination as it affects imports from other countries. Moreover, the CIT, in deciding the companion case before it, shall disregard any action taken by the ITC to implement a final decision of a binational panel or extraordinary challenge committee. All other options for the treatment of panel and court decisions involving affirmative ITC determinations in which it cumulatively assesses the effect of imports from Canada and other countries are administratively unworkable and would accord the Agreement a substantive impact on the antidumping and countervailing duty laws that is not intended.

Amendments to Title 28, United States Code (Section 402)

Section 402 contains amendments to Title 28 of the U.S. Code that are necessary to implement the binational panel dispute settlement mechanism established under Article 1904 of the Agreement.

In general, antidumping and countervailing duty determinations are subject to judicial review under section 516A of the Tariff Act of 1930 and the corresponding provision granting the CIT jurisdiction over such cases, 28 U.S.C. 1581(c). However, an amendment is needed to assure that a litigant cannot invoke the CIT's "residual jurisdiction" provision, 28 U.S.C. 1581(i), for the purpose of circumventing the binational panel system established under the Agreement. Section 401(a) of the bill amends section 1581(i) to clarify that the section may not be used to review an antidumping or countervailing duty determination which is reviewable by the CIT under section 516A(a) or by a binational panel under section 516A(g).

Article 1904(15) of the Agreement requires the United States to amend its law to prohibit the issuance of declaratory judgments with respect to antidumping or countervailing duty cases involving Canadian merchandise. While the CIT is empowered to issue declaratory judgments as a general matter, it has never provided such relief in an antidumping or countervailing duty case because it generally has jurisdiction only over final antidumping and countervailing duty determinations. However, to assure compliance with the obligations of the Agreement, sections 402(b) and (c) of the bill amend 28 U.S.C. 2643(c) and 28 U.S.C. 2201, respectively, to provide that no court of the United States, including the CIT, may order declaratory relief in any action involving an antidumping or countervailing duty case regarding Canadian merchandise.

Section 402(d) amends Title 28 by adding a new section 1584 that gives the CIT exclusive jurisdiction over civil actions arising pursuant to a new section 777(d) of the Tariff Act of 1930 and commenced by the United States to enforce administrative sanctions levied for violation of a protective order or undertaking. New section 777(d) is added to the Tariff Act of 1930 by section 403 of this Act for the purpose of protecting proprietary information made available in binational panel proceedings.

Conforming Amendments to the Tariff Act of 1930 (Section 403)

Section 403 contains other conforming amendments to the Tariff Act of 1930 that are necessary to implement the binational panel dispute settlement mechanism established under Article 1904 of the Agreement. Most important among these amendments are those relating to the protection of proprietary information in binational panel and extraordinary challenge committee proceedings.

Section 777 of the Tariff Act of 1930 requires the Government agencies administering the antidumping and countervailing duty laws to protect business proprietary information obtained by such agencies during the course of an antidumping or countervailing duty proceeding. Section 777 further provides for the release of certain business proprietary information under an administrative protective order to representatives of interested parties to a proceeding and for the imposition of sanctions for violations of such orders. In cases under judicial review, the Department of Commerce and the ITC send the administrative record of the proceeding to the CIT, including business proprietary information which is submitted to the CIT under seal. The CIT may release business proprietary information to counsel under a judicial protective order.

Section 403(c) amends section 777 to add a new subsection (d) dealing with the disclosure of proprietary information in proceedings before binational panels and extraordinary challenge committees. The purpose of this provision is to protect proprietary information in the same manner that it is protected in domestic antidumping and countervailing duty proceedings. Paragraph (1) of new subsection (d) provides that, in the event of binational panel review of a determination or the convening of an extraordinary challenge committee, the Department of Commerce or the ITC may make available to authorized persons under a protective order a copy of all proprietary material in the administrative record of the proceeding. "Authorized persons" include members and appropriate staff of binational panels or extraordinary challenge committees and the Secretariat; counsel for parties to the proceedings and employees of such counsel; and, any officer or employee of the U.S. Government designated by the Department of Commerce or the ITC, as appropriate, to whom disclosure is necessary to implement the Agreement with respect to such proceeding. Paragraph (1) also states that privileged material as defined by the rules of procedure referred to in Article 1904(14) of the Agreement may not be disclosed. Paragraph (2) of new subsection (d) requires that protective orders issued under this subsection meet the form and content prescribed by regulations issued by the Department of Commerce or ITC, as appropriate.

Paragraph (3) of new subsection (d) establishes that it is unlawfl to violate a protective order issued under this subsection or an equivalent order (known as an "undertaking" in Canada) entered into with an authorized agency of Canada to protect proprietary material in a binational panel or challenge committee proceeding. Paragraph (4) then establishes that such violations would be subject to substantial civil penalties, up to $100,000 per violation, in addition to sanctions presently available to the agencies for violation of administrative protective orders. Such penalties would be assessed by the Department of Commerce or the ITC, depending on which agency had issued the protective order found to be violated. The Department of Commerce would assess penalties for violation of Canadian undertakings.

Paragraph (5) of new section 777(d) provides that any person against whom sanctions are imposed may obtain review of such sanctions by appeal to the CIT within 30 days or the order imposing the sanctions. In the event any person fails to pay a civil penalty or to comply with other sanctions, paragraph (6) provides for enforcement of such sanctions by the CIT.

Paragraph (7) of new section 777(d) authorizes the Department of Commerce and the ITC, in aid of their duties under section 777(d), to have access to pertinent documents, to summon witnesses, take testimony, and administer oaths, to require the production of pertinent documents, and issue subpoenas. This provision extends to the Department of Commerce authority parallel to the ITC's current authority, provided in 19 U.S.C. 1333, with regard to obtaining information concerning other investigations within its jurisdiction. Like the ITC's existing authority, this provision gives the agencies recourse to the U.S. courts to enforce their administrative subpoenas.

Amendments to Antidumping and Countervailing Duty Law (Section 404)

Under Article 1902 of the Agreement, each party reserves the right to change or modify its antidumping or countervailing duty law. Article 1901 further provides, however, that any amendment to a party's antidumping or countervailing duty statute shall apply to goods from the other party only if such application is specified in the amending statute. This commitment is embodied in section 404 of the implementing legislation. Section 404 explicitly provides that any amendment to section 303 or Title VII of the Tariff Act of 1930, or any successor statute, or any other statute which provides for judicial review of final determinations under such statutes or indicates the standard of review to be applied, that is enacted after the Agreement enters into force shall apply to Canada only to the extent specified in such amendment.

Organizational and Administrative Provisions (Section 405)

Section 405 sets forth the organizational and administrative provisions necessary to implement U.S. obligations under Chapters 18 and 19 of the Agreement, including the administration or responsibilities required by binational panel review and the extraordinary challenge committee system.

Under the Agreement, a binational panel will be constituted to review a particular antidumping or countervailing duty determination whenever panel review is properly requested. Annex 1901.2 of the Agreement sets forth the procedures for selecting panelists. The United States and Canada will prepare a roster of 50 individuals, each country selecting 25, to serve as panelists in disputes under Chapter 19. These individuals must be citizens of the United States or Canada, chosen strictly on their merits, and may not be affiliated with either Government.

Upon request for a panel, both the United States and Canada shall appoint two panelists, normally from the roster, and shall agree on the fifth panelist. Absent agreement on the fifth panelist, the four appointed panelists shall select, by agreement, the fifth panelists from the roster. If there is no such agreement, the fifth panelist shall be selected by lot from the roster. The selection of the five panelists shall be completed no later than the 61st day after a request for a panel.

For extraordinary challenge committees, the United States and Canada agreed under Annex 1904.13 to establish a 10-person roster of current or former judges, each country naming five persons to such roster. Each committee will be composed of three members, with each country appointing one member and the third being chosen by the two appointed members or, if necessary, by lot.

Section 405(a) provides the procedures for U.S. selection of panelists and committee members. Because panelists substitute for judges and the appointment of U.S. judges is subject to the advice and consent of the Senate, the Committee believes that Congressional input into the selection of panelists and committee members is essential if the binational panel dispute settlement mechanism is to parallel the existing process of domestic judicial review. Therefore, section 405(a) explicitly sets forth a mechanism for Congressional review of individuals whom the United States proposes as panelists and committe members.

Subsection (a)(1) establishes within the present interagency organization established under section 242 of the Trade Expansion Act of 1962 an interagency group to be chaired by the USTR and composed of such other officers of the U.S. Government as the USTR deems appropriate. In addition to general oversight of the U.S. Secretariat established under section 405(e) and making recommendations about this convening of extraordinary challenge committees, this group shall prepare each year a list of individuals who are qualified, consistent with Chapter 19 of the Agreement, to serve as panelists and committee members. From this list, the USTR shall select individuals for placement on a preliminary candidate list that shall be submitted to the Senate Committee on Finance and the House Committee on Ways and Means by January 3 of each year.

The USTR shall consult with the Committees regarding the list and may amend the list, with a view to submitting a final list to the Committees by March 31 of that year. The final list may only include individuals whose names were submitted to the Committees at least 15 days prior to the submission of the final list. Individuals on the final list are eligible to serve on binational panels and challenge committees convened pursuant to Chapter 19 of the Agreement during the one-year period beginning on the following April 1.

The Committee recognizes that extraordinary circumstances could result in a need for additional panelists beyond those approved through the clearance procedures that begin on January 3 of each year. Therefore, the Committee has included a provision allowing the USTR to submit a proposed amendment to the final candidate list no later than July 1 of any calendar year. Any proposed amendment would be considered by the Committees in the same manner as the original list.

Subsection (a)(6) provides that only the USTR is authorized to select or appoint individuals to binational panels or challenge committees on behalf of the United States. Such selection or appointment of U.S. citizens as panelists must be from the final candidate list submitted to the Committees, or such list as it may be amended under this subsection.

Notwithstanding the Congressional consultation process set forth in this subsection, for the purposes of panels that may be convened during the three-month period after the Agreement enters into force, the USTR may select panelists from the preliminary candidate list to be submitted to the Committees by January 3, 1989.

Section 405(b) provides that, notwithstanding any other provision of law, individuals appointed by the United States to serve as panelists or committee members, or individuals assisting them, shall not be considered employees, or otherwise affiliated with, the Government of the United States. Section 406(c) further provides that, except for violations of protective orders and undertakings covering proprietary information, such individuals shall be immune from suit and legal process relating to acts performed in their official capacity.

Section 405(d) states that the Department of Commerce, the ITC, and the USTR are authorized to promulgate the necessary regulations to carry out their responsibilities under Chapters 18 and 19 of the Agreement.

Under section 405(e), the President is authorized to establish a U.S. Secretariat, consistent with Article 1909 of the Agreement, which shall be subject to the oversight of the interagency group established under subsection (a)(1)(A) and shall facilitate the operation of Chapters 18 and 19 of the Agreement and the work of the binational panels and extraordinary challenge committees. The Secretariat shall not be considered an "agency" within the meaning of 5 U.S.C. 552 and, therefore, will not be subject to the Freedom of Information Act, the Privacy Act, or the Government in the Sunshine Act.

Authorization of Appropriations for the Secretariat, the Panels, and the Committees (Section 406)

Article 1909 and Annex 1901.2 of the Agreement provide that the United States and Canada will be responsible for the operating costs of their respective Secretariat offices and that they will share expenses of binational panels. Section 406 implements this obligation by authorizing the necessary appropriations of funds for the U.S. Secretariat and dispute resolution proceedings under Chapter 18, and the U.S. share of expenses of binational panels and extraordinary challenge committees convened pursuant to Chapter 19 of the Agreement.

Subsection (a) authorizes such sums as may be necessary, up to a maximum of $5 million, to be appropriated to the agency within which the U.S. Secretariat is established for each fiscal year succeeding fiscal year 1988 for the establishment and operations of the U.S. Secretariat and for the U.S. share of expenses of the dispute settlement proceedings under Chapter 18 of the Agreement. Subsection (b) authorizes to be appropriated to the USTR for fiscal year 1989 such sums as may be necessary to pay the U.S. share of expenses of dispute settlement proceedings under Chapter 19 of the Agreement. The annual authorization of appropriations for this function is intended to assure that full consultation on panel members takes place under section 405. The USTR is authorized to transfer such funds to any other agency in order to facilitate payments of such expenses.

Testimony and Production of Papers in Extraordinary Challenges (Section 407)

Under Article 1904(13) of the Agreement, either the United States or Canada may avail itself of the extraordinary challenge procedure set out in Annex 1904.13 if it alleges, among other things, that a member of a binational panel was guilty of gross misconduct, bias, or a serious conflict of interest, or otherwise materially violated the rules of conduct. Section 407 of this Act provides measures to assist an extraordinary challenge committee in investigating any such allegation, including the authority to have access to pertinent documents, to summon witnesses, take testimony, and administer oaths, to require the production of pertinent documents, and to issue subpoenas. Section 407 also provides that the committee may request the Attorney General of the United States to invoke the aid of any district or territorial court of the United States in requiring the attendance and testimony of witnesses and the production of documents.

Requests for Review of Canadian Antidumping and Countervailing Duty Determinations (Section 408)

Section 408 sets forth the authority and procedures for requesting binational panel review under Article 1904 of the Agreement of an antidumping or countervailing duty determination by the Canadian Government with respect to Canadian imports of U.S. merchandise. Section 408(a) provides that requests for review of Canadian antidumping or countervailing duty determinations by the United States on its own behalf will be made by the U.S. Secretary. Section 408(b) provides that a person, within the meaning of Article 1904(5) of the Agreement, may request binational panel review of a Canadian determination by filing a timely request with the U.S. Secretary. Receipt of such a request shall be deemed to be a request within the meaning of Article 1904(4) of the Agreement. Upon request for review of a Canadian determination, whether such request is by the U.S. Secretary or another person, the U.S. Secretary shall inform parties involved in the Canadian proceeding of the request for panel review.

Subsidies (Section 409)

Article 1906 of the Agreement provides that the dispute settlement provisions set forth in Chapter 19 shall be in effect for five years, with a possible two-year extension, pending the development of a substitute system of rules for antidumping and countervailing duties as applied to trade between the two countries. Failure to agree on a new regime at the end of the seven-year period would allow either country to terminate the Agreement on six-months notice. Under Article 1907, the two countries agreed to establish a working group to seek to develop such a substitute system as well as more effective rules and disciplines concerning the use of government subsidies. Section 409 sets forth negotiating objectives for these discussions as well as procedures for Congressional consideration of any agreement reached and establishes a mechanism for identifying U.S. industries likely to face increased subsidized import competition.

Negotiating authority.—Section 409(a) authorizes the President to enter into an agreement with Canada on rules applicable to bilateral trade between the United States and Canada that deal with unfair pricing and government subsidization and provide for increased discipline on subsidies. Pursuant to subsection (a)(2), the objectives of the United States in negotiating such an agreement include:

(1) Achievement, on an expedited basis, of increased discipline on government production and export subsidies that have a significant impact, directly or indirectly, on bilateral trade; and,

(2) Attainment of increased and more effective discipline on those Canadian Government (including provincial) subsidies having the most significant adverse impact on U.S. producers that compete with subsidized Canadian products in the United States and Canada.

Special emphasis should be given to obtaining discipline on Canadian subsidy programs that adversely affect U.S. industries which directly compete with subsidized imports, including, but not limited to, coal mining, oil and gas production, non-ferrous metal mining and smelting, agricultural production, fisheries, and forest products industries.

Section 409(a)(3) requires the U.S. members of the working group to consult regularly with the Senate Committee on Finance, the House Committee on Ways and Means, and the private sector advisory committees established under section 135 of the Trade Act of 1974 regarding the issues being considered by the working group and the U.S. position in it. The bill further requires the U.S. members of the working group to submit an annual report, beginning in January 1990, to such Congressional Committees on the progress of the working group.

Any agreement entered into under subsection (a), including an amendment to the Agreement, would require Congressional approval of implementing legislation to make any necessary or appropriate changes in U.S. domestic laws. Paragraph (4) provides that, notwithstanding any other provision of this legislation, the "fast-track" procedures provided under section 151 of the Trade Act of 1974 shall not apply to such implementing legislation unless the President notifies Congress that the agreement meets the following requirements:

(1) The agreement will provide greater discipline over government subsidies and no less discipline over unfair pricing practices than the GATT Subsidies and Antidumping Codes, taking into account the effects of the Agreement; and,

(2) The Agreement will neither undermine the GATT disciplines nor detect from U.S. efforts to increase such disciplines in the Uruguay Round. The purpose of this provision is to make clear the Committee's belief that any agreement between the United States and Canada on subsidies or unfair pricing practices should reinforce, rather than detract from, the GATT.

Identification of industries facing subsidized imports.—During consideration of this legislation, the Committee was concerned that existing subsidies in Canada may have an impact on U.S. industries, in light of the establishment of a free trade area between the United States and Canada. In particular, Members were concerned that industries which face subsidized imports from Canada might experience a deterioration in their competitive position prior to agreement between the two countries under Article 1907 to strengthen subsidy disciplines. Therefore, the Committee agreed to establish a mechanism for identifying such industries and developing information on their situation. The mechanism is included in this legislation because it responds to concerns generated by this Agreement. However, it may in the future be applied to imports from other countries if similar concerns exist.

Under subsection (b)(1) of section 409, any entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a U.S. industry may file a petition with USTR to be identified under this section if it has reason to believe that:

> (1) As a result of the Agreement, the industry is likely to face increased competition from subsidized imports from Canada with which it directly competes; or, the industry is likely to be faced with increased competition from subsidized imports from any other country designated by the President, following Congressional consultation, as benefitting from a reduction in tariffs or other trade barriers under a future trade agreement; and,
>
> (2) The industry is likely to experience a deterioration of its competitive position before rules and disciplines relating to the use of government subsidies have been developed with respect to such country.

Within 90 days of receiving a petition under subsection (a)(1), USTR shall decide, in consultation with the Secretary of Commerce, whether to identify the industry on the basis that there is a reasonable likelihood that the industry may face such subsidization and deterioration. The Committee intends the USTR to consider both Federal and provincial subsidies in Canada in determining whether the situation described in paragraph (1) may exist.

Paragraph (3) requires the USTR to compile and make available to an identified industry information under section 305 of the Trade Act of 1974 or to recommend to the President that the ITC be requested to investigate the industry under section 332 of the Tariff Act of 1930. USTR shall take either or both of such actions at the request of the identified industry.

Paragraph (4) requires the USTR and the Secretary of Commerce to review information obtained under paragraph (3) and consult with the industry to consider whether any action is appropriate under section 301 of the Trade Act of 1974 or the countervailing duty law, including government self-initiation of such investigations. The USTR is also required to consult with appropriate private sector advisory committees, the Senate Committee on Finance and the House Committee on Ways and Means, and other appropriate Government agencies.

The Committee recognizes the Executive Branch opinion, as set forth in the Statement of Administrative Action accompanying this legislation, that countervailable subsidies are normally to be dealt with by the countervailing duty laws of each country. However, there may also be domestic subsidies, including those faced by the non-ferrous metals industry, that are more appropriately addressed under section 301.

In the event the Government does self-initiate an investigation under section 302(c) of the Trade Act of 1974 and the President determines to take action under section 301(a), the bill requires the President to give preference to actions that most directly affect the product that benefits from governmental subsidies and were the subject of the investigation, unless other action would be more effective. This preference for sectoral retaliation is not meant to establish a preference for section 301 retaliation generally. The preference was established in this group of cases because of the unique circumstances of various U.S. industries that may be affected by this section, including non-ferrous metal producers.

Paragraphs (5) and (6) of this subsection clarify the relationship of this provision to other laws of the United States. Paragraph (5) explicitly states that any decision made under this section shall not in any way prejudice or affect action under any other trade law. A decision to identify an industry under this section does not constitute a determination of the existence of a subsidy or of an unfair trade practice. Such a determination cannot be made without meeting the procedures and requirements under the appropriate statutes. Likewise, a decision not to identify an industry should have no bearing on determinations under the countervailing duty law or Title III of the Trade Act of 1974.

Paragraph (6) states that nothing in this subsection may be construed as altering, or adding, any standing requirements under any law of the United States. Furthermore, the standing requirements to file a request under this subsection are similar to the requirements under the countervailing duty law. The Committee does not intend that industries be identified because they compete with imports derived from subsidized products. For example, the coal industry could not request to be identified because of increased competition from imports of electricity.

Termination of Agreement (Section 410)

Section 410 addresses the possibility of the Agreement being terminated. Article 1906 authorizes either the United States or Canada to terminate the Agreement if they fail to agree on a substitute system of rules for disciplining subsidies and unfair pricing practices. If no such agreement is reached but the President nevertheless decides not to terminate the Agreement, section 410(a) requires the President to submit to the Congress a report explaining why continued adherence to the Agreement is in the national economic interest.

In the event that the Agreement is terminated, section 410(b) provides that any ongoing enforcement proceedings with respect to violations of protective orders or undertakings would be continued. It also provides that, if the Agreement is terminated at a time during which a binational panel is reviewing a determination, the determination would be reviewable in U.S. courts.

TITLE V—EFFECTIVE DATES AND SEVERABILITY

Effective Dates (Section 501)

Unless otherwise provided, the provisions of this bill take effect on the date the Agreement enters into force. Only the following provisions are effective on the date of enactment: Sections 1 and 2; Title I; section 304 (except for subsection (f)); section 309; and sections 501 and 502. Subsection (c) of section 501 provides that the provisions of this Act shall cease to have effect on the date on which the Agreement ceases to be in force.

The Committee notes that the bill contains no explicit general provision for termination of the Agreement. The Agreement provides, in Article 2106, that it may be terminated by either party upon six months' notice to the other party. Under section 125 of the Trade Act of 1974, every trade agreement entered into under the authority of that Act is subject to termination, in whole or in part, or withdrawal, upon due notice, at the end of the period specified in the agreement, which may not be more than three years from the date on which the agreement becomes effective. If not terminated or withdrawn from at the end of that period, the agreement is subject to termination or withdrawal thereafter upon notice of not more than six months. Since the termination provision of the Agreement and the provisions of section 125 are in congruity, there was no need for a separate termination provision unique to this bill.

Severability (Section 502)

Section 502 provides that if any provision of this bill is held to be invalid, the remaining provisions are not to be affected.

VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee on Finance states that the bill was ordered favorably reported by a voice vote.

PART II. REPORT OF THE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

The Committee on Agriculture, Nutrition, and Forestry to which was referred the bills, S. 2651 (and its companion bill H.R. 5090), having considered the same, reports favorably thereon and recommends that the bills do pass.

Brief Explanation

The major provisions of the bill considered by the Committee on Agriculture are briefly described below.

The bill will amend section 22 of the Agricultural Adjustment Act to provide that the President could, pursuant to Articles 705.5 and 707 of the Agreement, exempt products of Canada from import restrictions imposed under section 22.

In order to implement the provisions of Article 708(3) of the Agreement, the bill would revise the Virus-Serum-Toxin Act to provide that, in the case of any virus, serum, toxin, or analogous product for use in the treatment of domestic animals originating in Canada, such Articles may be imported into the United States upon a certification by Canada as prescribed by the Secretary of Agriculture or upon the issuance of a permit from the Secretary of Agriculture.

The bill would amend section 302 of the Federal Seed Act to provide that the provisions of that Act requiring the staining of seeds will not apply to alfalfa or clover seed originating in Canada.

The bill would amend the Federal Plant Pest Act pursuant to Article 708(3) of the Agreement. The amendments would change the requirements governing imports of plant pests from Canada.

Restrictions governing the importation of plants from Canada will be revised in order to implement the Agreement. The Plant Quarantine Act will be amended to allow the importation of certain plants from Canada upon a certification by Canada that the plant is free of disease and insect pests.

The bill would amend the Federal Noxious Weed Act of 1974, pursuant to Article 708(3) of the Agreement to except products of Canada from the requirement that imports of weeds covered by that Act must be accomplished by a permit from the United States Secretary of Agriculture.

Finally, in order to implement Schedule 4 of Annex 708.1 of the Agreement, the bill would allow imports of cattle, sheep, and other animals from Canada even if rinderpest or foot-and-mouth disease have been determined to exist in some region of Canada if:

(1) The United States and Canada have entered into an agreement delineating the criteria for recognizing that a geographical region of either country is free from rinderpest or foot-and-mouth disease; and,

(2) The appropriate official of the government of Canada certifies that the region of Canada from which the animal or meat originated is free from rinderpest and foot-and-mouth disease.

Background

The value of agricultural production in the United States is roughly ten times that of Canada. In 1986, cash receipts from farm sales for livestock and crops totaled $135.2 billion in the United States. In Canada for the same time period, cash receipts totaled $12.6 billion.

Trade is more important to Canadian agriculture than United States agriculture. Total Canadian agricultural exports are nearly one third the size of United States agricultural exports, even though United States agricultural production is roughly ten times larger than Canadian agricultural production.

The United States has been a major market for Canadian agricultural products. In 1986, the United States represented a market for more than 75 percent of Canadian exports of sugar, live animals, red meats and maple products. Of the grain products leaving Canada, 64 percent landed in the United States.

Canada has consistently been among the top five markets for United States products. Canada was the number two importer of United States produced fruits in 1987, ranking only behind Japan. Canada is the number one foreign market for United States vegetables.

Summary

The Agreement should result in modest increases in agricultural trade between the two countries. There may be some disruptions in local grain markets in particular as producers become able to move grains and oilseeds freely across the border. The Committee believes that the implementation of the Agreement should be monitored and that negotiations between our countries should continue with the ultimate goal of removing all trade barriers and market distortions.

Purpose and Need

H.R. 5090, the implementing bill for the Agreement approves and implements the free-trade agreement negotiated by the United States with Canada under the authority of Section 102 of the Trade Act of 1974, as amended by Title IV of the Trade and Tariff Act of 1984.

The implementing bill makes certain changes in United States law that are necessary or appropriate to implement the Agreement. This report discusses the agricultural trade provisions of the Agreement and section 301(c) through (f) of the implementing bill.

Most changes in United States law and regulation implementing the Agreement will apply only with respect to Canada. United States law and practice with respect to other countries, their nationals, and firms will generally be left undisturbed.

Many provisions of the Agreement will not require any change in United States law or administrative procedure. In numerous cases this is so because existing United States laws and regulations are "grandfathered" (i.e., exempted) from the obligations of the Agreement or because United States law and practice are already in conformity with the obligations imposed by the Agreement. Where United States law affords discretion to comply with the Agreement, the implementing agency will exercise its discretion in a manner consistent with the Agreement. In addition, some provisions of the Agreement impose obligations only on Canada.

Explanation of Agreement and Legislation

1. Agricultural Subsidies

Under Article 701(1) of the Agreement, the United States and Canada have agreed to work together through multilateral negotiations such as the Uruguay Round of Multilateral Trade Negotiations to achieve, on a global basis, the elimination of all subsides which distort agricultural trade.

Article 701(2) prohibits each country from introducing or maintaining export subsidies on agricultural goods exported to the territory of the other country.

Article 701(3) provides that neither country, nor any public entity that they estabish or maintain, shall sell agricultural goods in the other country at a cost below the acquisition price plus handling, storage, and other costs.

The Department of Agriculture should monitor agricultural imports from Canada to ensure fulfillment of Canada's commitments under Article 701.

It is the understanding of the Committee that although the application of the term "acquisition price" in Article 701(3) to sales by public entities such as the Canadian Wheat Board is not specifically delineated, such sales are covered by that paragraph. Of particular concern to the Committee is the determination of the "acquisition price" of wheat in the context of the initial payment and final payment system used by the Canadian Wheat Board. Any manipulation of the pricing system by the Canadian Wheat Board would be subject to review by the United States to ensure that Canada's obligations under Article 701(3) were not being circumvented.

It is the understanding of the Committee that the provisions of Article 701(3) also apply to public entities established or maintained by either party, including any government (federal or provincial) sanctioned monopsony (monopoly seller).

Another area of concern to the Committee is the determination of the acquisition price of eggs in the context of any payment system of the Canadian government or public entities. It is the understanding of the Committee that the United States will routinely monitor the Canadian sales price policy for eggs. It is the intent of the Committee that any manipulation of the pricing system for eggs by the Canadian government or public entities should be subject to review by the United States to ensure that Canada's obligations under Article 701(3) are not being circumvented.

In order to implement Article 701(3), the Committee believes that the United States should also pursue consultations with Canada regarding the price setting policy of the Canadian Wheat Board as it affects goods exported to the United States. These consultations should be directed toward establishing a method to determine the price at which the Canadian Wheat Board is selling agricultural goods to the United States and the Canadian Wheat Board's acquisition price for those goods. The ideal method would be a public price setting mechanism transparent to the United States Government, producers, and processors.

It is the understanding of the Committee that the United States will review individual sales for export to the United States of agricultural commodities by the Canadian government and public entities, including necessary price, quantity, and quality information, to ensure compliance with Article 701(3).

Another area of concern to the Committee is potential sales for export by Canadian public entities of agricultural goods such as eggs to private firms, where the private firm ships only a component of such goods to the United States. The Department of Agriculture should, pursuant to Article 701(3), monitor such sales to ensure that the sale price of the Canadian public entity would not be below cost.

Article 701(4) requires each country to take the export interests of the other country into account in using export subsidies on agricltural goods to third countries. It is the understanding of the Committee that this Article will not require a change in the administration of the Export Enhancement Program (EEP) to third countries. The United States currently takes into account the export interests of Canada when conducting the EEP for sales to third countries.

As part of the commitments on agricultural subsidies, under Article 701(5), Canada agreed to exclude from the transport rates established under the Western Grain Transportation Act (WGTA) agricultural goods originating in Canada and shipped via west coast ports for consumption in the United States. The Committee notes, nowever, that certain other transportation subsidies for shipments of grain, particularly grain being sold through eastern ports, are grandfathered in the Agreement. It is the understanding of the Committee that the Administration will try to negotiate an end to these transportation subsidies. The Committee hopes that such subsidies will ultimately be dismantled by Canada as each country seeks to fulfill the goal of Article 701(2)—that neither country inroduce subsidized products into the territory of the other.

2. Special Provisions for Fresh Fruits and Vegetables

Article 702 provides that either country for the next 20 years, under certain conditions, may apply a temporary duty on designated fresh fruits and vegetables. However, the application of such a duty cannot cause the total duty on these products to exceed the lesser of the MFN duty that was in effect for the corresponding season prior to the Agreement of the then current MFN duty. [This provision is discussed in greater detail in the report on H.R. 5090 issued by the Senate Committee on Finance.]

3. Market Access for Agriculture

Under Article 703, both countries are required to work together to improve access to each other's markets through the elimination or reduction of import barriers, in order to facilitate trade in agricultural goods. As Article 102(e) stresses generally, the Agreement is a beginning rather than a conclusion. While the United States has succeeded in substantially liberalizing trade with Canada, the Agreement does not eliminate all trade barriers. But with respect to any remaining trade barriers, the Agreement lays the foundation for further bilateral and multilateral cooperation to expand and enhance benefits under the Agreement.

For example, under Article 706 of the Agreement, the United States obtained a useful liberalization of existing Canadian import quotas on chickens, turkeys, eggs, and their products. The commercial benefits of this achievement are reflected, for example, by the support for the Agreement by the Agricultural Technical Advisory Committee for Trade in Poultry and Eggs. However, the United States has not yet succeeded in eliminating these quotas, which still restrict United States opportunities to sell poultry, eggs and their products in the Canadian market.

It is the intent of the Committee that the United States use its mandate for further negotiations to seek to eliminate the remaining agricultural import barriers. However, such liberalization must contain assurances on the part of both countries, that other nations will not take advantage of the free trade between the United States and Canada by using one of the countries as a funnel for subsidized goods into the other.

Particularly where an unfavorable imbalance in market opportunites remains after the Agreement enters into force (as with respect, for example, to Canada's quantitative restrictions on imports of poultry, eggs, and egg products), the Committee intends for the United States to attach the greatest importance to eliminating such trade barriers.

4. Market Access for Meat

Article 704 generally prohibits either country from imposing quantitative import restrictions on the other's meat goods, with an exception to prevent the frustration of actions taken regarding meat import, from third countries should the other country fail to take equivalent action against third country meat imports. [This article and the required legislative changes are discussed in greater detail in the report on H.R. 5090 issued by the Senate Committee on Finance.]

5. Market Access for Grain and Grain Products

Under Article 705, Canada has agreed to remove its import permit requirements for the importation of United States wheat and wheat products, oats and oat products, or barley and barley products when the level of government support provided by the United States for the particular grain is less than or equal to the level of government support provided by Canada for that grain. Annex 705.4 of the Agreement sets forth the methodology for calculating each country's level of government support and provides for the establishment of working groups to review this calculation. This methodology was developed specifically for the Agreement.

It is the understanding of the Committee that the implementation of Article 705 and Annex 705.4 will be accomplished by making changes in agency practice in order to collect and analyze data on United States and Canadian levels of government support in accordance with Annex 705.4. In addition, the Department of Agriculture will select representatives to the working group provided for in Annex 705.4. Among other things, this working group will assist in the refinement of the formulas outlined in Annex 705.4. The Committee intends for the Department of Agriculture to report annually to the Congress the result of government support calculations and to inform Congress concerning any proposed revisions to the formulas outlined in Annex 705.4 of the Agreement.

In addition, under Article 705(5), the United States and Canada have reserved their rights to impose, consistent with the other provisions of the Agreement, quantitative restrictions or import fees on imports of certain specified Canadian grains or grain products, for purposes of restricting the importation of the grain or of a grain product due to its content of that grain, when imports of the particular grain increase signficantly as a result of a substantial change in the United States or Canadian support programs for that grain. The specified grains are wheat, oats, barley, rye, corn, triticale and sorghum.

Section 301(c) of the implementing bill amends section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624, hereinafter referred to as "section 22"), to authorize the President to exempt products of Canada from section 22 import restrictions pursuant to Article 705(5).

Regarding paragraph five of Article 705, under current United States law, the provision under which quantitative restrictions or import fees would most likely be imposed is section 22. Accordingly, before any import restriction could be imposed on a particular grain or grain product pursuant to section 22, the President would first have to determine that the requirements of section 22 were met. That is, it would first be necessary to determine that the particular Article was being, or was practically certain to be, imported under such conditions and in such quantities as would render or tend to render ineffective, or materially interfere with, a United States price support or stabilization program. Only after making this determination would the United States, under Article 705(5), determine whether, in the case of Canada, imports of the particular Article have increased significantly as a result of a substantial change in the support programs for the relevant grain in either the United States or Canada.

In determining whether a change in the support programs of the United States or Canada for one of the specified grains is a "substantial change" within the meaning of Article 705(5), the Committee believes that a change that has a material market impact should not be considered to be unsubstantial simply because the change is a relatively minor change in policy. A minor change in policy can nonetheless be a substantial change in a program.

A broad universe of changes could be "substantial" within the meaning of Article 705(5). For example, under the right conditions both of the following instances could be considered to be a "substantial change" within the meaning of Article 705(5): (1) a change in the current Canadian policy regarding the distribution of permits to export grain into the United States such that private entities were freely granted permits regardless of market conditions, and (2) a change in the United States schedule of reductions in price support loan rates under which the loan was reduced three percent from the loan rate for the previous crop rather than being reduced five percent, as the market had anticipated.

The term "increase significantly" should not be read to require that imports of a grain or grain product from Canada must reach a particular portion of total United States demand for the particular grain or grain product. Similarly, the term "increase significantly" should not be read to require a particular level of imports in absolute terms. For example, a small increase in absolute terms of such imports could constitute a "significant" increase in such imports relative to previous levels of imports from Canada.

The Committee does not believe that the phrase "as a result of" in Article 705(5) requires the absence of other factors that might contribute to a significant increase in imports, nor is it necessary for the "substantial change" in support programs to be the largest single contributing factor. Furthermore, there could be a delay between the time a substantial change occurred in the support program and the resulting significant increase in imports, including where the significant increase in imports results from a substantial change to support programs occurring before the Agreement enters into force.

Article 705(1) also provides that, once the import permit requirements are removed for a particular grain, Canada may require imports from the United States of that grain to be accompanied by an end-use certificate, denatured if for feed use, or accompanied by a certificate issued by Agriculture Canada if for seed use. It is the intent of the Committee that the United States should pursue consultations with Canada with the goal of avoiding the application of these requirements if at all possible. If these import requirements are imposed by Canada, the United States should monitor their implementation to ensure that end-use certificates are freely provided and that the requirements do not become an undue restriction on trade. In this regard, it is important to note that the United States has not waived any of its rights under the General Agreement on

Tariffs and Trade respecting the application of these import requirements by Canada.

6. Market Access for Poultry and Eggs

Under Article 706, together with Annex 706, Canada has agreed that if Canada maintains import quotas on certain poultry, poultry products, eggs or egg products, then those quotas will not be below certain minimum global levels.

7. Market Access for Sugar-Containing Products

Under Article 707, the United States has agreed not to impose quantitative import restrictions or import fees on Canadian products containing ten percent or less sugar by dry weight for the purpose of restricting the sugar content of such products. The United States currently imposes certain quantitative restrictions on imports of sugar-containing products under the authority of section 22.

Section 301(c) of the implementing bill amends section 22 to authorize the President to exempt products of Canada from section 22 import restrictions pursuant to Article 707.

It is the understanding of the Committee that no changes in agency procedure or practice are contemplated to implement this provision. Current import quotas on sugar containing products maintained for purposes of restricting the sugar content of such goods already exclude products containing 10 percent or less sugar by dry weight. The incentive to import a product because it contains world price sugar disappears at the ten percent sugar content level. This provision also will not affect current import quotas on other products that may contain sugar that are maintained for other purposes, such as those to restrict the dairy product content of such product.

8. Technical Regulations and Standards for Agricultural, Food, Beverage and Certain Related Goods

Article 708 of the Agreement, in combination with Annex 708.1, provides general principles and certain commitments regarding technical regulations and standards governing trade between the United States and Canada in agricultural, food, beverage and certain related goods. To further the implementation of Article 708 and the schedules in Annex 708.1, Article 708 provides for the establishment of eight working groups composed of representatives of both countries on the following subjects of agricultural trade: animal health; plant health, seeds and fertilizers; meat and poultry inspection; dairy, fruit, vegetable and egg inspection; veterinary drugs and feeds; food, beverage and color additives and unavoidable contaminants; pesticides; packaging and labeling of agricultural, food, beverage and certain related goods for human consumption. The FTA does not require the Federal government to pre-empt state regulation in these areas.

The Article also provides for the establishment of a joint monitoring committee to monitor the progress of the various working groups to ensure the timely implementation of Article 708 and Annex 708.1. The joint monitoring committee will report the progress of the working groups to the Secretary of Agriculture for the United States, the Minister of Agriculture for Canada, such other Cabinet-level officers or Ministers as may be appropriate, and to the Commission established pursuant to Chapter 18 of the Agreement.

Several provisions of the implementing bill are for the purpose of implementing certain provisions of Article 708 and, more particularly, the various schedules to Annex 708.1. The following discussion is organized in the order of those schedules. Required legislative changes are noted.

Schedule 1: Feeds

Pursuant to Schedule 1, it is the understanding of the Committee that the appropriate agencies, including the Department of Agriculture and the Food and Drug Administration, will work together with their Canadian counterparts to harmonize or to make equivalent both federal and state requirements concerning the content, manufacture, testing, adulteration, and labeling of feeds. With respect to state provisions regarding feeds, the appropriate agencies will work through the National Association of State Departments of Agriculture and the Association of American Feed Control Officials in the specified areas.

Schedule 2: Fertilizers

Schedule 2 lists the government requirements and exemptions from those requirements that both countries have agreed to work together to harmonize or to make equivalent with respect to the labeling, testing, and content of fertilizers and pesticides that are allowed in fertilizers. The implementation of this Schedule will be accomplished by the appropriate agencies, including the Department of Agriculture and the Environmental Protection Agency, working with their Canadian counterparts in the specified areas. With respect to state provisions regarding fertilizers, it is the understanding of the Committee that the appropriate agencies will work through the National Association of State Departments of Agriculture and the Association of American Plant Food Control Officials in the specified areas.

Schedule 3: Seeds

Schedule 3 requires the removal of the origin-staining requirements for imported Canadian alfalfa and clover seeds. This will be accomplished by amending the Federal Seed Act (7 U.S.C. 1582(e)) in section 301(e) of the implementing bill.

This schedule also provides that both countries will work together to enable Canadian seed imported into the United States to be governed by uniform regulatory requirements, and will maintain mutual recognition of each other's seed variety certification and testing methods. These provisions will be implemented by the appropriate agencies working with their Canadian counterparts. With respect to state provisions regarding seeds, it is the understanding of the Committee that the appropriate agencies will work through the National Association of State Departmetns of Agriculture and the American Association of Seed Control Officials in the specified areas.

Schedule 4: Animal Health

In order to implement this Schedule, section 301(f)(5) of the implementing bill amends section 306 of the Tariff Act of 1930 to enable the Secretary of Agriculture to establish regulations that would allow the importation of ruminants and swine and the fresh, chilled and frozen meat from areas of Canada free of foot and mouth disease and rinderpest, even if other areas in Canada may have foot and mouth disease or rinderpest. No other legislative provisions are currently required or appropriate to carry out the provisions of Schedule 4. Any future agreement that may be contemplated on harmonization or equivalence in the specified areas that would require a statutory change would of course be contingent on the passage of the appropriate legislation.

Section 301(d) amends the Virus-Serum-Toxin Act to enable the Secretary of Agriculture, when the conditions of Article 708(3) are met, to issue regulations that allow the entry into the United States of certain veterinary biologics with out a permit issued by the Secretary.

It is the understanding of the Committee that the Department of Agriculture will not exercise the authority to permit the importation from disease free areas of Canada until the agreement contemplated by Schedule 4 regarding foot and mouth disease and rinderpest is reached with Canada. Similarly, the Department of Agriculture will not exercise the authority provided by the amendment to the Virus-Serum-Toxin Act until the Department has determined that the appropriate Canadian system is harmonized with or equivalent to that of the United States.

Schedule 5: Veterinary Drugs

Schedule 5 requires the harmonization of health and safety regulatory requirements, definitions, claims, warnings and caution statements, procedures for establishing tolerances, methods of risk assessment and investigational new veterinary drug requirements of the United States and Canada. The Schedule calls for the adoption of the CODEX standards on residues of veterinary drugs in food and requires the parties to work toward harmonization with respect to other veterinary requirements and methods.

It is the understanding of the Committee that the appropriate agencies, including the Department of Agriculture and the Food and Drug Administration, will work with their Canadian counterparts in the specified areas.

Schedule 6: Plant Health

Schedule 6 provides for the United States and Canada to work toward the harmonization of plant quarantine procedures. regulations governing the importation of plants, qualifications of plant health inspectors, and other requirements and regulations governing the movement of plants.

Section 301(f) of the implementation bill amends the Federal Plant Pest Act to enable the Secretary to permit Canadian imports based on Canadian inspections that are equivalent to United States inspections.

Schedule 7: Pesticides

Schedule 7 provides for the parties to work toward harmonization in the areas of guidelines, technical regulations, standards, test methods, and other programs governing pesticides.

It is the understanding of the Committee that the appropriate agencies, including the Department of Agriculture, the Environmental Protection Agency and the Food and Drug Administration, will work with their Canadian counterparts in the specified areas. The Committee also intends for consultations with Congress to be undertaken if changes in United States practice regarding regulation of pesticides is contemplated under this Article.

Schedule 8: Food, Beverage, and Color Additives

Schedule 8 requires the United States and Canada, with respect to food, beverage and color additives, to work toward the development of a uniform policy, with respect to compounds that migrate to foods and beverages, for removing those compounds from regulation where found below certain thresholds; and uniform methods of risk assessment and health hazard evaluation systems.

It is the understanding of the Committee that the appropriate agencies, including the Food and Drug Administration, will work with their Canadian counterparts in the specified areas.

Schedule 9: Packaging and Labeling of Agricultural, Food, Beverage, and Certain Related Goods for Human Consumption

Schedule 9 calls on the parties to work toward harmonization in their respective regulations governing the packaging and labeling of agricultural, food, beverage, and certain related goods used for human consumption.

It is the understanding of the Committee that the appropriate agencies, including the Food and Drug Administration, will work with their Canadian counterparts in the specified areas.

Schedule 10: Meat, Poultry, and Egg Inspection

Schedule 10 provides that the parties shall work toward the harmonization of their respective meat, poultry, and egg inspection systems with the goal of simplifying import requirements for these products from either country.

It is the understanding of the Committee that the Department of Agriculture will work with its Canadian counterparts in the specified areas.

Schedule 11: Dairy, Fruit, and Vegetable inspection

Schedule 11 calls on the United States and Canada to work toward equivalent inspection systems for dairy products, fresh fruits, and vegetables. The Schedule also calls on the parties to accept the equivalence of laboratory system results from each other's federally accredited or approved laboratories for dairy inspection.

It is the understanding of the Committee that the Department of Agriculture will work with its Canadian counterparts in the specified areas.

Schedule 12: Unavoidable Contaminants in Foods and Beverages

Schedule 12 provides that the United States and Canada shall work toward harmonization of their respective regulatory requirements, test methods, and process for setting tolerance or action levels with respect to unavoidable contaminants in foods and beverages.

It is the understanding of the Committee that the appropriate agencies, including the Food and Drug Adminstration, will work with their Canadian counterparts in the specified areas.

Working Groups

It is currently anticipated that a representative of the Foreign Agricultural Service, United States Department of Agriculture, will be a member of each of the working groups established pursuant to Article 708. In addition, it is anticipated that the other United States members of the working groups will be comprised of technical experts and representatives of other appropriate Federal agencies. These working groups will encourage participation from representatives of State departments of agriculture, other associations responsible for standards and regulations, the public and interested groups in the private sector. All significant changes in regulatory schemes proposed by the Food and Drug Administration and the Environmental Protection Agency under the authority of the Federal Food, Drug and Cosmetic Act resulting from the activities of the working groups, including interpretation rules and general statements of policy, will be made using notice and comment procedures.

9. Consultations

The countries have agreed in Article 709 that they will consult with each other on agricultural issues at least semi-annually and at such other times as they may agree.

10. International Obligations

Under Article 710, the two countries retain their respective rights and obligations with respect to agricultural, food, beverage and certain related goods under the General Agreement on Tariffs and Trade (the "GATT") and agreements negotiated under the GATT, unless otherwise specifically provided for in Chapter Seven.

Committee consideration

The Committee held a hearing on May 24, 1988, to discuss the implications of the proposed Free Trade Agreement between the United States and Canada.

Witnesses at the hearing included: Ambassador Alan F. Holmer, Deputy United States Trade Representative; Peter C. Myers, Deputy Secretary, United States Department of Agriculture; Ann

M. Veneman, Associate Administrator, Foreign Agricultural Service, United States Department of Agriculture; Chip Roh, Counsel, Office of the United States Trade Representative; Kristen Allen, Agricultural Economist, National Center for Food and Agricultural Policy, Resources for the Future; and Fredrick L. Ikenson, Board of Directors, Customs and International Trade Law Division, D.C. Bar Association.

The Committee met on September 8, 1988, and favorably reported section 301(c) through (f) of the implementing legislation, S. 2651 (and H.R. 5090), by voice vote.

Rollcall votes

In accordance with paragraphs 7(b) of Rule XXVI of the Standing Rules of the Senate, it is announced that no rollcall votes were taken with respect to Committee action on S. 2651 (or H.R. 5090).

Section-by-Section Analysis

Section 301. Agriculture

Section 301(c) Agricultural Adjustment Act

This subsection would add an exception to the provisions of subsection (f) of section 22 of the Agricultural Adjustment Act.

Generally, section 22 authorizes the President to impose inport restrictions or fees on imports of an Article if those imports are materially interfering with domestic price support programs. Subsection (f) provides that the provisions of section 22 will override any inconsistent treaty or agreement entered into by the United States.

This section would amend section 22 to provide that the President could, pursuant to Articles 705.5 and 707 of the United States-Canada Free Trade Agreement (the "FTA"), exempt products of Canada from import restrictions imposed under section 22.

Article 705(5) provides that section 22 import restrictions can be applied to products of Canada only if imports from Canada have increased significantly as a result of a significant change in either the United States or Canada's farm programs.

Article 707 provides that section 22 import restrictions cannot be applied to Articles containing 10% or less sugar dry weight for the purpose of restricting the sugar content of those Articles.

Section 301(d) Importation of Animal Vaccines

This subsection would revise the Virus-Serum-Toxin Act pursuant to the provisions of Article 708(3) of the Agreement.

Currently, the Virus-Serum-Toxin Act prohibits the importation into the United States, without a permit from the Secretary of Agriculture, of any virus, serum, toxin, or analogous product for use in the treatment of domestic animals.

The revision to be made would, in the case of Articles originating in Canada, add an alternative to importation under a permit, that is, importation of such Articles with a certification by Canada as prescribed by the Secretary of Agriculture.

Section 301(e) Importation of Seeds

This subsection would amend subsection (e) of section 302 of the Federal Seed Act, pursuant to the provisions of Schedule 3 of Annex 708.1 of the Agreement.

Section 305 of the Federal Seed Act generally requires imported seeds containing 10% or more of alfalfa or clover seeds to be stained. This section would amend the Act to provide that the provisions of the Act requiring the staining of seeds will not apply to alfalfa or clover seed originating in Canada.

Section 301(f) Plant and Animal Health Regulations

This subsection will amend the Federal Plant Pest Act pursuant to Article 708(3) of the Agreement.

Paragraph (1) amends section 103 of the Federal Plant Pest Act. Currently, section 103 provides that importation or interstate movement of a plant pest is prohibited unless authorized under a general or specific permit from the Secretary of Agriculture and under regulations of the Secretary designated to prevent the dissemination of plant pests.

The bill would amend section 103 to provide that products of Canada could be imported into the United States notwithstanding the requirements listed in section 103 if the Canadian Articles are imported in accordance with regulations issued by the Secretary of Agriculture to prevent the dissemination into the United States of plant pests.

This subsection also will amend section 104 of the Federal Plant Pest Act, pursuant to Article 708(3) of the Agreement. This section currently provides that the mailing of plant pests is prohibited except when the mailing is accompanied by a copy of a permit issued under the Act.

Subsection (f)(2) would amend section 104 to allow the Secretary of Agriculture to issue regulations that would allow the mailing of products of Canada under terms and conditions different than those currently set forth in section 104 of the Federal Plant Pest Act. In other words, a permit from the Secretary of Agriculture might not be necessary.

Subsections (f) (3) and (4) of this section will amend sections 1 and 2 of the Act of August 10, 1912 (the Plant Quarantine Act), pursuant to Article 708(3) of the Agreement.

The provisions of these sections and the changes provided for by the bill is briefly set out below:

Section 1 of the Plant Quarantine Act provides that the importation into the United States of nursery stock is prohibited unless a permit therefor has been issued by the Secretary of Agriculture and the importing country certifies that the nursery stock has been inspected and certified to be free of disease and insect pests.

The implementing bill would amend section 1 to give the Secretary of Agriculture the discretion to waive the permit requirement for nursery stock imported from Canada.

Section 2 of the Plant Quarantine Act requires the Secretary of the Treasury to notify the Secretary of Agriculture of the importation of any nursery stock and the importer to notify the Secretary of Agriculture immediately on entry as to the details of the shipment of the stock and prohibits the interstate shipment of imported nursery stock without notification to the Secretary of Agriculture or officials of the State to which the stock is destined (or both), at the time of shipment, of the details about the shipment, unless the stock has been inspected by a State agency.

The implementing bill would provide that section 2 of the Plant Quarantine Act will not apply to nursery stock imported from Canada.

Section 301(f)(4) of the implementing bill would amend section 4(a) of the Federal Noxious Weed Act of 1974 (the "1974 Act"), pursuant to Article 708(3) of the Agreement. Section 4(a) of the 1974 Act currently provides that the interstate movement of a noxious weed is prohibited, unless (1) authorized by the Secretary of Agriculture under a general permit and (2) in accordance with the regulations of the Secretary to prevent the dissemination of noxious weeds.

Section 301(f)(4) of the implementing bill will amend section 4(a) of the 1974 Act to except products of Canada from the permit requirement. The prohibition of movement in violation of the safe movement regulations would still apply to Canada.

Section 301(f)(5) of the implementing bill would amend section 306 of the Tariff Act of 1930 (the "Tariff Act"), pursuant to Schedule 4 of Annex 708.1 of the Agreement. Section 306 of the Tariff Act currently prohibits the importation of any livestock or meat from countries in which the Secretary of Agriculture determines rinderpest or foot-and-mouth disease exists.

The implementing bill would add a new subsection (b) to section 306 to provide that the Secretary of Agriculture may permit, subject to such terms and conditions as the Secretary of Agriculture determines appropriate, the importation of cattle, sheep, or other ruminants, or swine (including embryos of such animals) or the fresh, chilled, or frozen meat of such animals from a region of Canada notwithstanding the existence of rinderpest or foot-and-mouth disease in Canada, if:

> (1) The United States and Canada have entered into an agreement delineating the criteria for recognizing that a geographical region of either country is free from rinderpest or foot-and-mouth disease; and,
>
> (2) The appropriate official of the government of Canada certifies that the region of Canada from which the animal or meat originated is free from rinderpest and foot-and-mouth disease.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee made the following evaluation of the regulatory impact which would be incurred in carrying out S. 2651.

The bill creates few new authorities and programs. Under the bill, several existing programs are modified for the purpose of implementing the Agreement.

The bill could create some additional regulatory requirements, particularly with respect to the harmonization of technical barriers to trade between the United States and Canada.

The bill could result in some additional paperwork or recordkeeping requirements, but could also decrease current paperwork requirements. Under the bill certain areas of technical regulation governing trade between Canada and the United States are to be harmonized. Harmonization will result in fewer recordkeeping requirements with respect to these technical regulations than is currently the case.

PART III. REPORT OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Committee Action

The Committee on Energy has taken an active role in the consideration of the Agreement as it pertains to energy. The President notified Congress on October 4, 1987, of his intent to enter into the Agreement, and signed the Agreement on January 2, 1988. On November 3, 1987, the Committee held a closed briefing on the Agreement. The Committee conducted hearings on April 19 and 21, 1988, to consider the implementation of the Agreement and its potential impact on energy and natural resources industries, particularly the natural gas and electricity sectors.

On August 10, 1988, the Committee ordered to be favorably reported H.R. 5090, a bill to implement the Agreement, with the accompanying report language.

Export of Oil From Alaska

Annex 902.5(3) of the Agreement, and section 305(a) of H.R. 5090, exempt Canada from the prohibition on the export of Alaskan oil under section 7(d) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2406(d)), up to a maximum volume of 50,000 barrels per day on an annual average basis, subject to the condition that such oil be transported to Canada from a suitable location within the lower 48 States.

The Committee has had a longstanding interest in exports of Alaskan crude oil. The Committee legislated the first restriction on the export of North Slope crude oil in 1973 when it amended the Mineral Leasing Act (MLA) to authorize granting a right-of-way for construction of the Trans-Alaska Pipeline System and included in the legislation oil export restrictions (30 U.S.C. 185). The Committee retains an abiding interest in exports of Alaskan crude oil, and most recently dealt with this subject in the context of legislation concerning oil and gas leasing on the coastal plain of the Arctic National Wildlife Refuge.

The Committee accepts the exemption for Canada in the Agreement from the prohibition on exporting Alaskan oil up to a maximum volume of 50,000 barrels per day with the understanding that the transportation of such oil shall include ocean transportation that shall be by vessels documented for U.S. coastwise trade.

Uranium Enrichment

The Agreement states that the United States shall exempt Canada from any restriction on the enrichment of foreign uranium under 161(v) of the Atomic Energy Act of 1954, as amended. Section 305(b) of H.R. 5090 amends section 161(v) of the Atomic Energy

Act of 1954 (42 U.S.C. 2201(v)) to exclude "source or special nuclear material originating in Canada" from the definition of "foreign origin" as used in section 161(v). The Committee interprets "source or special nuclear material originating in Canada" to include only uranium mined in Canada.

The Committee is very disturbed by the failure of the Administration to take action to ensure the viability of the domestic uranium industry, as Congress has considered a viable industry as vital to the U.S. national defense and security. Dependency on other nations for strategic minerals generally, and for uranium in particular, involves long-term economic and energy security risks to the Nation's common defense and security. This is particularly true since the United States continues to have a substantial reliance upon uranium for its national defense needs, and other countries, such as Canada, will not supply uranium to the United States for military purposes.

In order to revitalize the domestic mining and milling industry, the erosion of the domestic uranium market must be reversed. The Committee supports a strengthened national policy which will encourage the revitalization of the U.S. mining and milling industry and the domestic uranium enrichment program. A number of proposals, including S. 2097, which passed the Senate on March 30, 1988, and an Administration compromise, which was adopted by the Senate as an amendment to the Nuclear Regulatory Commission Authorization Act (H.R. 1315) on August 8, 1988, are currently being considered by the House of Representatives. All of these proposals, including the compromise negotiated between the Administration, the mining industry, and the utilities, contain titles to revitalize the domestic uranium industry, establish a fund for mill tailings reclamation and restructure the Department of Energy's uranium enrichment program as a Government corporation. The Administration, by letter of July 27, 1988 from Secretary of the Treasury Baker, supports the negotiated compromise. We urge that the Administration actively support passage of these important pieces of legislation.

Effect on Natural Gas Regulation

The Committee concurs with the description of the effect of the Agreement on natural gas regulatory matters contained in the Statement of Administrative Action as clarified further in this report.

The Committee is vitally concerned with the potential effect of the Agreement on natural gas trade between the two countries. Inasmuch as the Agreement is silent on natural gas issues, it is important to review the issues regarding natural gas trade that have arisen during the Committee's review of the proposed Agreement, and to clarify the Committee's understanding of the effect of the Agreement on those issues.

Section 3 of the Natural Gas Act (15 U.S.C. 717b) requires anyone seeking to export any natural gas from the United States to a foreign country, or to import any natural gas from a foreign country, to seek an order in advance authorizing the transaction. The order may include "such terms and conditions" as are determined to be "necessary or appropriate". Authority under this provision is vested in the Secretary of Energy by section 301(b) of the Department of Energy Organization Act (DOE Act) (42 U.S.C. 7151(b)). The Secretary of Energy has delegated his authority to perform that function to the Administrator of the Economnic Regulatory Administration (ERA).

Sections 4 and 5 of the Natural Gas Act require rates and charges for interstate transportation of natural gas to be "just and reasonable" (15 U.S.C. 717c) and not "unduly discriminatory, or preferential" (15 U.S.C. 717(d). Authority under these provisions is vested in the Federal Energy Regulatory Commission (FERC) by section 402(a) of the DOE Act (42 U.S.C. 7172(a)). The FERC has authority under the Natural Gas Act to prescribe rules and regulations governing all transportation rates and charges.

The Committee feels it is important to clarify that the Agreement does not in any way affect the ability of the U.S. regulatory authorities, including ERA and FERC, to impose appropriate terms and conditions on imports and exports of natural gas under the Natural Gas Act. The Committee sought, and received, assurances that nothing in the Agreement alters, supplants, or prempts the mandate of the Natural Gas Act or the Natural Gas Policy Act of 1978.

In a recent case involving imports of natural gas from Canada into the United States, the FERC ruled on the proper ratemaking treatment of the cost of Canadian natural gas. The FERC required the importer to flow through the costs of Canadian gas to U.S. customers in the same manner in which domestic pipelines are required to flow through the costs of domestic gas to U.S. customers.

In that case, the FERC issued Opinion No. 256, which has become known as the "as-billed" decision. That Opinion required that the costs associated with production of Canadian and U.S. natural gas must be afforded equal rate treatment when interstate pipeline companies pass those costs on to consumers. (*Natural Gas Pipeline Company of America,* Opinion No. 256, issued December 8, 1986, 37 FERC 61,215; Opinion No. 256–A, issued May 27, 1987, 39 FERC 61,218). The FERC ruled that Natural may not recover the cost of its Canadian gas on an "as-billed" basis; that is, it could not include certain production-related costs in its demand charge that Canadian authorities had allowed the Canadian exporter to include in its demand charge. Instead, FERC required those production-related costs to be included in the commodity component of the pipeline's transportation rates, just as it requires those costs to be included in the commodity component of a pipeline's transportation rates in the case of domestic gas transportation.

Canadian officials objected to the FERC's decision, and sought to have it changed. The FERC refused. Officials on both sides of the border have acknowledged that the issue was raised during the Agreement negotiations and both now acknowledge that the Agreement does not affect the decision.

As Chairman of the Committee, Senator Johnston wrote a letter on March 28, 1988, to the Honorable Marcel Masse, the Canadian Minister for Energy, Mines and Resources, asking for the Canadian interpretation of the effect of the Agreement on FERC Opinion No. 256. That letter asked, "Is it the Canadian Government's position that, upon approval of the Agreement by the United States and Canada, FERC Opinion No. 256 is overturned?".

The Canadian Ambassador to the United States, the Honorable Allan Gotlieb, replied to that letter on April 13, 1988, and stated:

> The Canadian Government does not view FERC's as-billed decision as being inconsistent with or affected by the Free Trade Agreement. I can assure you that the Canadian Government has no plans to use the agreement to overturn FERC's existing as-billed decision (Opinion 256).
>
> The Canadian Government had a series of consultations in 1987 with the U.S. Department of Energy on the as-billed decision, which provided a useful forum for discussing the Canadian concerns and the United States Government's rationale for its support for FERC's decision. In the event of future energy regulatory concerns—on either side of the border—article 905 of the agreement provides for similar consultations. We share the United States Administration's view that this provision will be helpful in avoiding future conflicts on regulatory issues.

In testimony before the Committee on April 19, 1988, DOE Deputy Secretary Martin stated in response to a question from Senator Bingaman, "Senator, from day one of this Agreement we have said that we felt 256 was consistent with the Free Trade Agreement. I think Ambassador Gotlieb is the official word of Canada, and I think it is encouraging that he would say that". (Transcript, page 35) When queried whether it would be possible to use Article 905 of the Agreement to challenge future decisions similar to Opinion No. 256, Mr. Robert Reinstein of the USTR's office stated:

> Clearly that [Article 905] applies to future actions, and it provides for consultation. It does not provide for change in any regulation. It opens up an avenue of enhanced communication in the complex area of energy regulation. That is the only provision in the Agreement, we believe, that has any bearing o decisions of the kind that Opinion 256 is, and it does not apply to Opinion 256 because it is a past action. In fact, there were already consultations on it. . . .
>
> Well, in theory that could challenge it, but in practice it is not inconsistent with any provision of the Agreement, nor was it something that the United States agreed to change, nor did they have any reason to expect that it would be changed.
>
> We frankly think that there would be no result if they did bring a case. In theory they can challenge a regulation that is on the books, but in practice it would not be successful. (Transcript, pages 36 and 37)

The FERC Chairman, the Honorable Martha O. Hesse, summed up FERC's understanding of the effect of the Agreement in written testimony submitted for the Committee's hearing record. She stated:

> Inasmuch as the principal statutes under which the Commission operates already mandate nondiscriminatory

treatment, the Free Trade Agreement does not in any way alter, supplant, or preempt that mandate. Similarly, since the Commission's policy, consistent with these statutory mandates, is one of nondiscriminatory treatment, we do not foresee any significant alteration or impact on the Commission's decisional processes in the future.

Oil and Gas Exploration and Development Incentive/Subsidies

Article 906 states that both parties agree to allow existing or future incentives for oil and gas exploration and development to maintain the reserve base for these resources.

The Committee directs the Department of Energy and the USTR to monitor the Canadian subsidies and incentives provided to independent oil and gas producers. The Committee is concerned that the current competitive advantage enjoyed by Canadian independent producers may be increased thus leading to a further decline in the position of U.S. independent producers.

It is the Committee's understanding that Article 906 does not affect in any way subsidies that currently are actionable under U.S. trade laws or affect the ability of an entity to obtain recourse under U.S. trade laws.

Subsidies

The Committee is concerned about Canadian subsidies in the energy sector and the transportation of energy sector that might fall outside the provisions already covered under the Agreement.

Uranium Processing

Annex 902.5(2) of the Agreement provides that Canada will exempt the United States from its export restrictions on unprocessed uranium. Canadian policy currently requires that all uranium intended for export from Canada be converted ("upgraded") to uranium hexafloride prior to export. Thus, current policy hinders the ability of U.S. conversion companies to compete for the provision of conversion services for this uranium.

The Committee supports the exemption for the United States from Canada's upgrade policy. The Committee believes that North American buyers of uranium must be given the option of having conversion services performed in the United States or in Canada based upon competitive bidding. The Committee also would view as not in keeping with the spirit of the Agreement any move by a Canadian company to underprice its uranium as an inducement to purchase conversion services.

Least Cost Alternative Test for Electricity

Under the Agreement, Canada has agreed to eliminate the "least cost alternative test" set out in the National Energy Board Part IV Regulations on the export of energy goods to the United States.

The least cost alternative test requires that an applicant for a license for the export of power from Canada demonstrate that the export price to be charged for electric power and energy would not result in prices in the country to which the power is exported being materially less than the least cost alternative power and energy at the same location within that country.

The Committee believes that the elimination of this test will provide for a more competitive market for electricity between the United States and Canada and supports its elimination.

Bonneville Power Administration (BPA) Intertie Access Policy

The Agreement provides for the principle of national treatment for British Columbia Hydro (B.C. Hydro) in the discussion of future energy sales and transmission with the BPA. Under the terms of the Agreement, B.C. Hydro shall be treated no less favorably under BPA's Intertie Access Policy than other U.S. utilities located outside the Pacific Northwest region. Such a provision is consistent with Article III of the GATT. The Agreement would require BPA to modify, if necessary, its long-term intertie access policy, after the parties enact the Agreement. The legality of providing priority intertie access to U.S. utilities in the Pacifc Northwest over utilities outside the Pacific Northwest is not addressed by the Agreement.

The Committee believes that the Agreement does not limit participation in discussions pertaining to U.S. West Coast electricity trade, including those between BPA and B.C. Hydro, and among California interests and B.C. Hydro. BPA maintains that the interest of all affected utilities and public and private entities are presently, and under the terms of the Agreement will continue to be, represented in BPA-B.C. Hydro negotiations. The Committee feels it is inappropriate to interpret the Agreement to support bringing non-Federal participants to the negotiating table. Any provision for such participation should be handled outside of the framework of the Agreement.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources in open business session on August 10, 1988, by a vote of a quorum present recommends that the Senate pass H.R. 5090. The roll call vote on reporting the measure was 16 yeas, 2 nays as follows:

YEAS

Mr. Johnston
Mr. Bumpers
Mr. Metzenbaum*
Mr. Bradley
Mr. Bingaman
Mr. Wirth
Mr. Fowler*
Mr. McClure
Mr. Hatfield
Mr. Weicker*
Mr. Domenici
Mr. Wallop
Mr. Murkowski
Mr. Nickles
Mr. Hecht
Mr. Evans

NAYS

Mr. Melcher*
Mr. Conrad

*Indicates voted by proxy.

PART IV. REPORT OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS

Summary

Chater 13 of the Agreement provides for liberalization of government procurement beyond that required by the GATT Agreement on Government Procurement (the Code). The Chapter expands the application of the Code to U.S. and Canadian Government procurements below the Code threshold. At present, this threshold is 130,000 Special Drawing Rights (SDR's) (approximately $156,000 in 1988); the Agreement proposes to lower it to $25,000.

The lowering of the Code threshold will eliminate "buy national" restrictions in both countries for a specified range of products procured by designated Federal agencies. Estimates show that this provision will open $3 billion of U.S. contracts and $500 million of Canadian contracts.

Section 306 of the implementing bill authorizes the President to waive "Buy American" procurement restrictions with respect to Canada for all purchases subject to Chapter 13, i.e., products and incidental services of Canada of a contract value of at least $25,000 where the procurement is otherwise covered by the GATT Government Procurement Code but for the Code threshold. This is achieved by amending the Trade Agreements Act of 1979—the only statutory change required to implement Chapter 13.

The Committee recognizes, however, that implementation of the full intent of Chapter 13 will require further Executive action. The Statement of Administrative Action accompanying the implementing bill explains in more detail what the Committee expects.

In addition to the actions outlined in the Statement of Administrative Action, the Committee intends that the bilateral negotiations called for in Article 1307 of the Agreement be pursued vigorously. These negotiations should address as many products, services, and Government entities as is feasible—including those areas of procurement listed in the Statement of Administrative Action as not now subject to Chapter 13.

The Committee is concerned about the negative effect that provincial procurement barriers can have on the ability of U.S. exporters to compete for government procurement contracts in Canada. Although discussions in the current version of the Agreement were not successful in addressing barriers below the level of the Federal Government in either country, it is the Committee's understanding that the two Governments will return to this subject at a later point. Recognizing that the current effort on procurement issues is only a first step, Canada and the United States have specifically agreed in the renegotiation article of the Agreement's Chapter 13 to continue negotiating the removal of all such barriers which fail to be addressed in the current multilateral effort in Geneva under the Agreement on Government Procurement. Both Canada and the United States are key players in this effort.

The Committee understands that, because neither the Canadian nor the U.S. Federal Government has definitive and clear jurisdiction over sub-Federal procurement matters, progress in this area may be severely limited. Nevertheless, the Committee strongly urges the Administration to continue to look for creative ways to solve these problems.

Committee Vote

The Governmental Affairs Committee considered H.R. 5090 and reported it favorably to the full Senate.

PART V. STATEMENT OF THE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Committee Action

On July 25, 1988, Senators Byrd and Dole, at the request of the Administration, introduced S. 2651, a bill to implement the Agreement. Pursuant to the provisions of 19 U.S.C. 2191(c), providing procedures for the expedited consideration of such free trade agreements, the bill was jointly referred to several committees, including the Committee on Banking, with jurisdiction over various aspects of the bill to approve and implement the Agreement. On August 9, 1988, H.R. 5090, the bill passed by the House to approve and implement the Agreement, which is exactly the same as S. 2651, was likewise referred to several Senate Committees including the Committee on Banking.

Two provisions of the legislation to approve and implement the agreement, section 305(a) and section 308, fall within the jurisdiction of the Committee on Banking. These relate to commitments made by the United States in Annex 902.5(3) and Article 1702(1) of the Agreement. On May 20, 1988, the Committee on Banking held a hearing to review those sections of the Agreement. Testifying on behalf of the Administration were William S. Merkin, Deputy Assistant USTR for Canada; James E. Ammerman, Director, Office of International Banking and Portfolio Investment, U.S. Department of the Treasury; and Stephen J. Canner, Director, Office of International Investment, U.S. Department of the Treasury. Testifying on behalf of the private sector were Edward L. Yingling, Executive Director, Government Relations, American Bankers Association; David A. Ruth, Director, International Corporate Affairs, American Express Company; and Peter A. Lefkin, Counsel, American Insurance Association.

On May 24, 1988, the Committee on Banking met and voted to recommend legislative language to implement Annex 902.5(3) and Article 1702(1) of the Agreement. The section 305(a) and section 308 provisions formally submitted by the Administration and contained in H.R. 5090 are identical to the language reported and recommended by the Committee on Banking on May 24, 1988.

Export of Oil From Alaska

In paragraph 3 to Annex 902.5 of the Agreement, the United States committed to "exempt Canada from the prohibition on the exportation of Alaskan oil under section 7(d) of the Export Administration Act of 1979, as amended, up to a maximum of 50 thousand barrels per day on an annual average basis, subject to the condition that such oil be transported to Canada from a suitable location within the lower 48 States." The Administration, after consulting with and taking account of the views of the Committee on Banking, formulated section 305(a) of H.R. 5090 to implement Annex 902.5(3) of the Agreement.

The legislative language of section 305(a) does not conform precisely to the applicable provision in the Agreement. The intent of paragraph 3 to Annex 902.5 of the Agreement is that any oil shipped from Alaska to Canada be transported on U.S. ships. However, because of Administration concerns regarding the constitutionality of the language in the agreement that "such oil be transported to Canada from a suitable location within the lower 48 States," language which was negotiated by the Administration, the substitute language in the bill requires "any ocean transportation of such oil shall be by vessels documented under section 12106 of Title 46, United States Code." The Administration has assured the Committee on Banking in writing that the proposed implementing language (1) is consistent with the intent of the Agreement; (2) is acceptable to Canada; (3) will have the same practical effect as the provision in the Agreement because of the absence of the necessary port facilities in Canada; and (4) fulfills the commitment to implement paragraph 3 of Annex 902.5.

Financial Services

In return for certain commitments made by Canada regarding the operation of U.S. financial institutions in Canada, the United States committed in Article 1702(1) of the Agreement to permit U.S., Canadian, and other foreign banks to deal in, underwrite, and purchase debt obligations fully backed by the Government of Canada or its political subdivisions. Under present law these same banks can underwrite and purchase obligations backed directly or indirectly by the full faith and credit of the United States, a State, or a political subdivision of a State. A change in U.S. law was needed to implement the U.S. commitment made in Article 1702(1). Section 308 of H.R. 5090, therefore amends section 5136 of the Revised Statutes [12 U.S.C. 24] to fulfill that commitment.

Section 308 permits banks to underwrite, deal in, and purchase for their account obligations that are backed, directly or indirectly, by the equivalent of the "full faith and credit" of the Canadian Government, a province, or any political subdivision of a province to the same extent banks can underwrite, deal in, and purchase for their account obligations backed by the full faith and credit of the U.S. Government, a State, or any political subdivision of a State.

The Committee in Banking notes that the Statement of Administrative Action which accompanies the legislation clarifies the section of the Agreement concerning the provision of insurance (Chapter 14) by emphasizing that the Agreement provides no authority, independent of that provided by Federal or State law, for any banking organization to provide the enumerated insurance services in the United States. The Committee on Banking welcomes this language as it makes clear its own intent with regard to the matter.

II. BUDGETARY IMPACT OF THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, sections 308 and 403 of the Congressional Budget Act of 1974, and paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the following letter has been received from the

Congressional Budget Office regarding the budgetary impact of the bill:

U.S. Congress,
Congressional Budget Office,
Washington, DC, August 3, 1988.

Hon. Lloyd Bentsen,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 2651, the United States-Canada Free-Trade Agreement Implementation Act of 1988. The attached table represents the estimated budget impact of the bill, as introduced on July 25, 1988.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Douglas Criscitello, who can be reached at 226-2860.

Sincerely,

James L. Blum,
Acting Director.

ESTIMATED COSTS TO THE FEDERAL GOVERNMENT TO IMPLEMENT THE UNITED STATES-CANADA FREE-TRADE AGREEMENT (H.R. 5090 AND S. 2651, AS INTRODUCED)

[By fiscal year, in millions of dollars]

	1989	1990	1991	1992	1993
Net revenue effects: Estimated revenues	−97	−198	−303	−421	−546
Direct spending:					
Commodity Credit Corporation:					
Estimated budget authority	2	2	3	4	4
Estimated outlays	2	2	3	4	4
Customs user fees:					
Estimated budget authority		22	1		
Estimated outlays		22	1		
Total direct spending:					
Estimated budget authority	2	24	4	4	4
Estimated outlays	2	24	4	4	4
Authorizations:					
U.S. Secretariat:					
Estimated budget authorization level	1	1	1	1	1
Estimated outlays	1	1	1	1	1
Binational panels and committees:					
Estimated budget authorization level	2				
Estimated outlays	2				
Other costs:					
Estimated budget authorization level	1	1	1	1	1
Estimated outlays	1	1	1	1	1
Total authorizations:					
Estimated budget authorization level	4	2	2	2	2
Estimated outlays	4	2	2	2	2
Net increase in the deficit	103	224	309	427	552

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[1] Costs of about $2 million a year for binational panels and committees would be expected to continue in years after 1989, but the bill only authorizes appropriations for fiscal year 1989.

III. REGULATORY IMPACT OF THE BILL

This statement is provided in compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate. With the limited exception of the exporter certification requirement of section 205, H.R. 5090 will impose no new regulatory burdens on any individuals or businesses, will not impact on the personal privacy of individuals, and will result in no new paperwork requirements.

IV. ADDITIONAL VIEWS

ADDITIONAL VIEWS BY SENATORS DENNIS DECONCINI AND HOWELL T. HEFLIN

The Committee on the Judiciary had jurisdiction over several provisions of the U.S.-Canada Free Trade Agreement ("FTA") implementing legislation, including Chapter 19 which creates a binational panel to replace judicial review in antidumping ("AD") and countervailing duty ("CVD") cases. The Committee held a hearing on this provision on May 20, 1988, reviewed the House Judiciary Committee record, met with Administration representatives and analyzed their proposed legislation, and received input from the Finance Committee and its staff. Despite its efforts, the Committee on the Judiciary was unable to reach a consensus in order to make a recommendation on the implementing legislation and the Committee was discharged from further consideration of the bill.

We believe, however, that the Agreement's creation of a binational panel to replace the United States' long-established judicial review sytem in AD/CVD cases raises such serious policy and constitutional questions that, as Members of the Judiciary Committee, we feel compelled to make our views part of the record. We understand that additional views of Members of the Committee on the Judiciary will be contained in the Finance Committee report to accompany H.R. 5090, the U.S.-Canada Free Trade Agreement Implementation Act.

In our view, to deprive U.S. citizens of their existing right to judicial review in AD/CVD cases in order to "reassure" Canada which has a "perception that administrative AD/CVD determination were open to being influenced politically" (Testimony of M. Jean Anderson before the Committee on the Judiciary, May 20, 1988 at 8) is unwise as a policy matter and raises grave constitutional problems.

Clearly, the Agreement panel procedure sets a precedent for elimination of judicial review in connection with future trade agreements with other nations. Even though elimination of judicial review is not the stated goal of the Agreement and decisions by U.S. courts were not seen as the problem in the negotiations with Canada (Id. at 8–9), Congress is being asked to take a dangerous step toward undoing the judicial system it has carefully developed over the past 200 years. This is a step that should be given the closest scrutiny so it does not undermine the judicial system that this country so greatly values.

Furthermore, the panel represents a potentially unequal and unworkable system. Review of AD/CVD decisions involving Canadian goods will be conducted by five person panels consisting of two or three Canadians, while review of all other AD/CVD decisions will be before the Court of International Trade ("CIT"). This parallel system could lead to the development of disparate jurisprudence between the panel and CIT and also between one panel and another. We also understand that in AD/CVD litigations currently, numerous disputes are taken to and resolved by the CIT judge before, and in anticipation of, the final briefing stage. Disputes arise over the state and completeness of the administrative record, access to confidential information in the record, whether an agency decision making was contaminated by bad faith, and other issues. The CIT judge can and does resolve issues such as these; the panel will be unable to do so.

Many constitutional questions have been raised by constitutional scholars, practicing attorneys, and bar/trade associations which, to date, have not been answered to our satisfaction. Our founding fathers went to war to secure, among other things, an independent judiciary. We ensured an independent judiciary by providing in Article III of the Constitution, that judges serve during good behavior at undiminished compensation.

The individuals who have shared their concerns with the Judiciary Committee regarding the panel proposal have noted that matters subject to "suit at common law or in equity or admiralty" which unquestionably include import duty cases, are at the "protected core" of Article III judicial powers. See *Thomas* v. *Union Carbide,* 473 U.S. 568, 587 (1985); *Northern Pipeline Co.* v. *Marathon Pipe Line Co.,* 458 U.S. 50, 70–71 n.25 (1982). Although the Administration states that the panel will operate pursuant to international law, in practice the panel will be applying and interpreting U.S. domestic law. Whether U.S. importers, U.S. farmers, U.S. manufacturers, U.S. workers, or U.S. consumers will suffer or prosper will depend on the panelists' resolutions of cases or controversies arising out of the interpretation and implementation of our laws. If these cases or controversies are at the "protected core" of the Judiciary's Article III powers, then the constitutional difficulties inherent in the panel proposal are self-evident.

In light of this and other constitutional issues, we stated in a letter dated May 27, 1988, to Senator Lloyd Bentsen, Chairman of the Committee on Finance, that it was imperative that an effective "fast-track" constitutional challenge provision be written into the implementing legislation. As the legislation was drafted, constitutional review of the binational panel system could be commenced 30 days after the date of publication in the Federal Register of notice that binational review has been completed. This stipulation will result in a delay of a year or more in determining the constitutionality of the panel system. Because it is in the interest of all concerned that this issue be resolved as quickly as possible, we recommended that constitutional review be available upon the filing of a complaint with the panel rather than upon the rendering of a panel decision. That recommendation was rejected. As a result, we continue to have serious reservations about the wisdom and the constitutionality of the creation of binational panels to replace the United States' long-established judicial system in antidumping and countervailing duty cases.

ADDITIONAL VIEWS BY SENATORS ORRIN G. HATCH, STROM THURMOND AND GORDON HUMPHREY

During the Senate Judiciary Committee examination of the proposed implementing legislation for the U.S.-Canada Free Trade Agreement, a number of Constitutional concerns were raised with respect to the binational panel created to hear antidumping and countervailing duty cases. We the undersigned confined our comments to the issue of the constitutionality of the binational panel.

We understand that the most recent legislative proposal has corrected one serious problem relating to review of constitutional questions. As the enabling legislation was originally drafted, it provided no Article III court review of the decisions of the binational panel and many questioned whether it is constitutionally permissible for Congress to deny review by any Article III court of questions concerning interpretations of the Constitution, statutes, or treaties of the United States. We understand that the latest draft of the legislation addressed this concern by providing Article III court review of constitutional challenges.

Another constitutional question raised with respect to this panel involves the appointments clause of the Constitution (Article II, section 2, clause 2), which gives the President the power to appoint "Officers of the United States" by and with the advice and consent of the Senate when the offices to be filled have been established by law and the appointments to them have not otherwise been provided in the Constitution. Officers of the United States are those who exercise significant authority pursuant to the laws of the United States and they may be appointed to office only in accordance with the appointments clause. *Buckley* v. *Valeo,* 424 U.S. 1, 109–143 (1976). If the panelists act to interpret and apply U.S. law, and their decisions are automatically binding as a matter of domestic law, then the decisions would clearly involve the exercise of "significant authority pursuant to the laws of the United States," and therefore the panelists would be found to be "Officers of the United States," who are subject to appointment by the President.

This appointments clause problem can be resolved by drafting the implementing legislation so that it authorizes the President to direct the implementation of decisions rendered by the binational panels and extraordinary challenge committees which avoids the problems associated with making the decision automatically binding as a matter of domestic law. This solution, supported by the Reagan Administration, ensures that decisions of the binational panels and extraordinary challenge committees would be implemented in a constitutionally acceptable way, without undermining the independence of the International Trade Commission. The President would be bound to implement these decisions as a matter of international law, as long as the treaty remains in force.

The latest draft of the implementing legislation has responded to this concern by including a provision that will be applicable in the event of a successful constitutional challenge to the automatically binding decisions of the binational panel. In the event of such a challenge, the latest draft provides that the President is authorized on behalf of the United States to accept, as a whole, the decision of a binational panel or extraordinary challenge committee and remand the determination to the administering authority to implement the decision.

While this constitutional concern has been remedied, we note that the creation of a binational panel has raised a number of policy concerns. The Court of International Trade currently provides independent judicial review of administrative determinations in antidumping and countervailing duty cases. We question whether placing review of these decisions in the hands of a binational panel will provide either greater independence or fairness than found under current domestic law. Indeed, placing review of these decisions before binational panels may be unadvisable in the context of future trade agreements with countries other than Canada.

In conclusion, we believe the implementing legislation for the U.S.-Canada Free Trade Agreement should resolve the appointments clause problem to authorizing the President to direct Government agencies to implement the international obligations resulting from the binational panel and extraordinary challenge committees. This has been achieved in the latest draft of the implementing legislation by including such a provision that will take effect in the event of a successful constitutional challenge to the automatically binding decisions of the binational panel.

ADDITIONAL VIEWS BY SENATOR BILL BRADLEY ON THE REPORT BY THE SENATE ENERGY COMMITTEE ON THE LEGISLATION TO IMPLEMENT THE U.S.-CANADA FREE-TRADE AGREEMENT

The report language of the Senate Committee on Energy and Natural Resources makes reference to the domestic uranium industry and its current lack of "viability." The report calls on the President and Congress to enact legislation to remedy the industry's ills. However, while the domestic uranium industry has been in decline for a number of years, it is hard to find a compelling rationale for blatant protectionism, as embodied in S. 2097, or the extensive intervention in uranium markets that is included in the negotiated compromise.

As testimony before the Energy Committee has made clear, the industry's problems stem from a number of sources:

Reduced demand due to nuclear plant cancellations and lower than expected nuclear industry growth;

Low-grade domestic ore bodies; and

Huge inventories accumulated by the U.S. military and electric utility industry.

Testimony before the Committee on Energy has indicated that the uranium industry has already significantly adjusted to the changed market. U.S. production plummeted from 39 million tons in 1981 to 8.6 million tons in 1985. Domestic production is at or only slightly below those levels today. The uranium mining industry has trimmed back and restructured. I am concerned that the measures endorsed by the Committee, which are called temporary, will do nothing for the industry in the long run while costing taxpayers and utility consumers a very high price. These measures will provide domestic producers an unnecessary windfall, a boom, to be followed in all probability by yet another bust.

The Committee report makes reference to the strategic value of uranium. While this is not in dispute, the measures referenced in the Committee report do not follow axiomatically from that premise. First, as mentioned above, I do not anticipate an end to the domestic uranium industry, even in today's market. U.S. military demand is such a small proportion of domestic production that it is difficult or impossible to imagine a U.S. industry of insufficient size to meet these demands. Second, the United States has accumulated an incredible stockpile of uranium, sufficient for some 20 to 30 years of defense needs. Third, the principal uranium exporting nations are Canada and Australia, among our closest and oldest allies. Although there are now prohibitions on imports of some imported uranium to the United States for our defense needs, it is simply untenable to imagine a lack of cooperation in a true supply emergency. Lastly, we do have extensive domestic uranium ore resources. Given the huge uranium inventory on hand, we can ward off any sudden crisis. And, given the insurance afforded by our military surplus, we will have adequate time to exploit our own resources in the extremely unlikely event of a market disruption.

National security is perpetually the excuse for any industry seeking protection from stiff foreign competition. Almost without exception, these pleas for Federal assistance are self-serving and, ultimately, counterproductive. The Senate would do well to disregard this latest call by the uranium industry for a costly hand-out.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Pursuant to the requirements of paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill H.R. 5090, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 13031 OF THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

* * * * * * *

SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) * * *

(b) LIMITATION ON FEES.— (1) * * *

* * * * * * *

(10) The fee charged under subsection (a)(10) of this section with respect to goods of Canadian origin (as determined under section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988) shall be in accordance with article 403 of the United States-Canada Free-Trade Agreement. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customes User Fee Account.

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TARIFF ACT OF 1930

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TITLE III—SPECIAL PROVISIONS

PART I—MISCELLANEOUS

* * * * * * *

SEC. 305. IMMORAL ARTICLES—IMPORTATION PROHIBITED.

(a) PROHIBITION OF IMPORTATION.—All persons are prohibited from importing into the United States from any foreign country any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing containing any matter advocating or urging treason or insurrection against the United States, or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article which is obscene or immoral, or any drug or medicine or any article whatever for causing unlawful abortion, or any lottery ticket, or any printed paper that may be used as a lottery ticket, or any advertisement of any lottery. No such articles, whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles and, unless it appears to the satisfaction of the appropriate customs officer that the obscene or other prohibited articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee, the entire contents of the package in which such articles are contained, shall be subject to seizure and forfeiture as hereinafter provided: *Provided,* That the drugs hereinbefore mentioned, when imported in bulk and not put up for any of the purposes hereinbefore specified, are excepted from the operation of this subdivision; *Provided further,* That the Secretary of the Treasury may, in his discretion, admit the so-called classics or books of recognized and established literary or scientific merit, but may, in his discretion, admit such classics or books only when imported for noncommercial purposes**[**.**]***: Provided further, That effective January 1, 1993, this section shall not apply to any lottery ticket, printed paper that may be used as a lottery ticket, or advertisement of any lottery, that is printed in Canada for use in connection with a lottery conducted in the United States.*

* * * * * * *

SEC. 306. CATTLE, SHEEP, SWINE, AND MEATS—IMPORTATION PROHIBITED IN CERTAIN CASES.

(a) * * *

* * * * * * *

(b) Notwithstanding subsection (a), the Secretary of Agriculture may permit, subject to such terms and conditions as the Secretary of Agriculture determines appropriate, the importation of cattle, sheep, or other ruminants, or swine (including embryos of such animals) or the fresh, chilled, or frozen meat of such animals from a region of Canada notwithstanding the existence of rinderpest or foot-and-mouth disease in Canada, if—

(1) the United States and Canada have entered into an agreement delineating the criteria for recognizing that a geographical region of either country is free from rinderpest or foot-and-mouth disease; and

(2) the appropriate official of the government of Canada certifies that the region of Canada from which the animal or meat originated is free from rinderpest and foot-and-mouth disease.

* * * * * * *

SEC. 311. BONDED MANUFACTURING WAREHOUSES.

All articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty, and without having an internal-revenue stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported, be made and manufactured in bonded warehouses similar to those known and designated in Treasury Regulations as bonded warehouses, class six: *Provided,* That the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be prescribed by the Secretary of the Treasury: *Provided further,* That the manufacture of distilled spirits from grain, starch, molasses, or sugar, including all dilutions or mixtures of them or either of them, shall not be permitted in such manufacturing warehouses.

* * * * * * *

No article manufactured in a bonded warehouse, except to the extent that such article is made from an article that is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implenentation Act of 1988, may be withdrawn from such warehouse for exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of such Act of 1988, without payment of a duty on such imported merchandise in its condition, and at the rate of duty in effect, at the time of importation.

SEC. 312. BONDED SMELTING AND REFINING WAREHOUSES.

(a) * * *

(b) The several charges against such bond may be canceled in whole or in part—

(1) upon the exportation *(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of such Act of 1988)* from the bonded warehouses which treated the metal-bearing materials, or from any other bonded smelting or refining warehouse, of a quantity of the same kind of metal contained in any product of smelting or refining of metal-bearing materials equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c), or

(2) upon payment of duties on the dutiable quantity of metal contained in the imported metal-bearing materials, or

(3) upon the transfer of the bond charges to another bonded smelting or refining warehouse by physical shipment of a quantity of the same kind of metal contained in any product of smelting or refining of metal-bearing materials equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c), or

(4) upon the transfer of the bond charges to a bonded customs warehouse other than a bonded smelting or refining warehouse by physical shipment of a quantity of the same kind of metal contained in any product of smelting or refining equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c), and upon withdrawals from such other other warehouse for expor-

tation *(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of such Act of 1988)* or domestic consumption the provisions of this section shall apply, or

* * * * * * *

(d) Upon the exportation *(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the product is a drawback eligible good under section 204(a) of such Act of 1988):* of a product of smelting or refining other than refined metal the bond shall be credited with a quantity of metal equivalent to the quantity of metal contained in the product exported less the proportionate part of the deductions allowed for losses in determination of the bond charge being cancelled that would not ordinarily be sustained in production of the specific product exported as ascertained from time to time by the Secretary of the Treasury.

* * * * * * *

SEC. 313. DRAWBACK AND REFUNDS.

(a) * * *

* * * * * * *

(n) For purposes of subsections (a), (b), (f), (h), and (j)(2), the shipment on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, to Canada of an article made from or substituted for, as appropriate, a drawback eligible good under section 204(a) of such Act of 1988 does not constitute an exportation.

(o) For purposes of subsection (g), vessels built for Canadian account and ownership, or for the Government of Canada, may not be considered to be built for any foreign account and ownership, or for the government of any foreign country, except to the extent that the materials in such vessels are drawback eligible goods under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988.:

* * * * * * *

TITLE IV—ADMINISTRATIVE PROVISIONS

* * * * * * *

Part III—Ascertainment, Collection, and Recovery of Duties

* * * * * * *

SEC. 502. REGULATIONS FOR APPRAISEMENT AND CLASSIFICATION.

(a) * * *

(b) REVERSAL OF SECRETARY'S RULINGS.—No ruling or decision once made by the Secretary of the Treasury, giving construction to any law imposing customs duties, shall be reversed or modified adversely to the United States, by the same or a succeeding Secretary, except in concurrence with an opinion of the Attorney General recommending the same, [or a final decision of the United States Court of International Trade.] *a final decision of the United States Court of International Trade, or a final decision of a binational panel pursuant to article 1904 of the United States-Canada Free-Trade Agreement.*

* * * * * * *

SEC. 508. RECORDKEEPING.

(a) REQUIREMENTS.—Any owner, importer, consignee, or agent thereof who imports, or who knowingly causes to be imported, any merchandise into the customs territory of the United States shall make, keep, and render for examination and inspection such records (including statements, declarations, and other documents) which—

(1) pertain to any such importation, or to the information contained in the documents required by this Act in connection with the entry of merchandise; and

(2) are normally kept in the ordinary course of business.

(b) Any person who exports, or who knowingly causes to be exported, any merchandise to Canada shall make, keep, and render for examination and inspection such records (including certifications of origin or copies thereof) which pertain to such exportations.

[(b)] *(c)* PERIOD OF TIME.—The records required by subsection (a) *and (b)* of this section shall be kept for such periods of time, not to exceed 5 years from the date of entry, as the Secretary shall prescribe.

[(c)] *(d)* LIMITATION.—For the purposes of this section and section 509, a person ordering merchandise from an importer in a domestic transaction does not knowingly cause merchandise to be imported unless—

(1) the terms and conditions of the importation are controlled by the person placing the order; or

(2) technical data, molds, equipment, other production assistance, material, components, or parts are furnished by the person placing the order with knowledge that they will be used in the manufacture or production of the imported merchandise.

(e) Any person who fails to retain records required by subsection (b) or the regulations issued to implement that subsection shall be liable to a civil penalty not to exceed $10,000.

* * * * * * *

SEC. 514. FINALITY OF DECISIONS; PROTESTS.

(a) * * *

(b) With respect to determinations made under section 303 of this Act or title VII of this Act which are reviewable under section 516A of this title, determinations of the appropriate customs officer are final and conclusive upon all persons (including the United States and any officer thereof) unless a civil action contesting a determination listed in section 516A of this title is commenced in the United States Court of International Trade, *or review by a binational panel of a determination to which section 516A(g)(2) applies is commenced pursuant to section 516A(g) and article 1904 of the United States-Canada Free-Trade Agreement.*

* * * * * * *

SEC. 516A. JUDICIAL REVIEW IN COUNTERVAILING DUTY AND ANTIDUMPING DUTY PROCEEDINGS.

(a) REVIEW OF DETERMINATION.—

(1) * * *

* * * * * * *

(5) TIME LIMITS IN CASES INVOLVING CANADIAN MERCHANDISE.—Notwithstanding any other provision of this subsection, in the case of a determination to which the provisions of subsection (g) apply, an action under this subsection may not be commenced, and the time limits for commencing an action under this subsection shall not begin to run, until the 31st day after—

(A) the date of publication in the Federal Register of—

(i) notice of any determination described in paragraph (1)(B) or a determination described in clause (ii) or (iii) of paragraph (2)(B), or

(ii) an antidumping or countervailing duty order based upon any determination described in clause (i) of paragraph (2)(B), or

(B) the date on which the Government of Canada receives notice of a determination described in clause (vi) of paragraph (2)(B).

(b) STANDARDS OF REVIEW.—

(1) * * *

* * * * * * *

(3) EFFECT OF DECISIONS BY UNITED STATES-CANADA BINATIONAL PANELS.—In making a decision in any action brought under subsection (a), a court of the United States is not bound by, but may take into consideration, a final decision of a binational panel or extraordinary challenge committee convened pursuant to article 1904 of the Agreement.

* * * * * * *

(f) DEFINITIONS.—For purposes of this section—

(1) * * *

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(5) AGREEMENT.—The term "Agreement" means the United States-Canada Free-Trade Agreement.

(6) UNITED STATES SECRETARY.—The term "United States Secretary" means the secretary provided for in paragraph 4 of Article 1909 of the Agreement.

(7) CANADIAN SECRETARY.—The term "Canadian Secretary" means the secretary provided for in paragraph 5 of Article 1909 of the Agreement.

(g) REVIEW OF COUNTERVAILING DUTY AND ANTI-DUMPING DUTY DETERMINATIONS INVOLVING CANADIAN MERCHANDISE.—

(1) DEFINITION OF DETERMINATION.—For purposes of this subsection, the term "determination" means a determination described in—

(A) paragraph (1)(B) of subsection (a), or

(B) clause (i), (ii), (iii), or (vi) of paragraph (2)(B) of subsection (a),

if made in connection with a proceeding regarding a class or kind of Canadian merchandise, as determined by the administering authority.

(2) EXCLUSIVE REVIEW OF DETERMINATION BY BINATIONAL PANELS.—If binational panel review of a determination is requested pursuant to Article 1904 of the Agreement, then, except as provided in paragraphs (3) and (4)—

(A) the determination is not reviewable under subsection (a), and

(B) no court of the United States has power or jurisdiction to review the determination on any question of law or fact by an action in the nature of mandamus or otherwise.

(3) EXCEPTION TO EXCLUSIVE BINATIONAL PANEL REVIEW.—

(A) IN GENERAL.—A determination is reviewable under subsection (a) if the determination sought to be reviewed is—

(i) a determination as to which neither the United States nor Canada requested review by a binational panel pursuant to Article 1904 of the Agreement,

(ii) a revised determination issued as a direct result of judicial review, commenced pursuant to subsection (a), if neither the United States nor Canada requested review of the original determination, or

(iii) a determination issued as a direct result of judicial review that was commenced pursuant to subsection (a) prior to the entry into force of the Agreement.

(B) SPECIAL RULE.—A determination described in subparagraph (A)(i) is reviewable under subsection (a) only if the party seeking to commence review has provided timely notice of its intent to commence such review to the United States Secretary, the Canadian Secretary, all interested parties who were parties to the proceeding in connection with which the matter arises, and the administering authority or the Commission, as appropriate. Such notice is provided timely if the notice is delivered by no later than the date that is 20 days after the date described in subparagraph (A) or (B) of subsection (a)(5) that is applicable to such determination. Such notice shall contain such information, and be in such form, manner, and style, as the administrating authority, in consultation with the Commission, shall prescribe by regulations.

(4) EXCEPTION TO EXCLUSIVE BINATIONAL PANEL REVIEW FOR CONSTITUTIONAL ISSUES.—

(A) CONSTITUTIONALITY OF BINATIONAL PANEL REVIEW SYSTEM.—An action for declaratory judgment or injuctive relief, or both, regarding a determination on the grounds that any provision of, or amendment made by, the United States-Canada Free-Trade Implementation Agreement Act

of 1988 implementing the binational panel dispute settlement system under Chapter 19 of the Agreement violates the Constitution may be brought in the United States Court of Appeals for the District of Columbia Circuit. Any action brought under this subparagraph shall be heard and determined by a 3-judge court in accordance with section 2284 of title 28, United States Code.

(B) Other constitutional review.—Review is available under subsection (a) with respect to a determination solely concerning a constitutional issue (othert than an issue to which subparagraph (A) applies) arising under any law of the United States as enacted or applied. An action for review under this subparagraph shall be assigned to a 3-judge panel of the United States Court of International Trade.

(C) Commencment of review.—Notwithstanding the time limits in subsection (a), within 30 days after the date of publication in the Federal Register of notice that binational panel review has been completed, an interested party who is a party to the proceeding in connection with which the matter arises may commence an action under subparagraph (A) or (B) by filing an action in accordance with the rules of the court.

(D) Transfer of actions to appropriate court.—Whenever an action is filed in a court under paragraph (A) or (B) and that court finds that the action should have been filed in the other court, the court in which the action was filed shall transfer the action to the other court and the action shall proceed as if it had been filed in the court to which it is transferred on the date upon which it was actually filed in the court from which it is transferred.

(E) Frivolous claims.—Frivolous claims brought under subparagraph (A) or (B) are subject to dismissal and sanctions as provided under section 1927 to title 28, United States Code, and the Federal Rules of Civil Procedure.

(F) Security.—

(i) Subparagraph (A) actions.—The security requirements of Rule 65(c) of the Federal Rules of Civil Procedure apply with respect to actions commenced under subparagraph (A).

(ii) Subparagraph (B) actions.—No claim shall be heard, and no temporary restraining order or temporary or permanent injunction shall be issued, under an action commenced under subparagraph (B), unless the party seeking review first files an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense parties affected for any loss, expenses, or damage caused by the improvident or erroneous issuance of such order or injunction. If a court upholds the constitutionality of the determination in question in such action, the court shall award to a prevailing party fees and expenses, in addition to any costs incurred by that party, unless the court finds that the position of the other party was substantially justi-

fied or that special circumstances make an award unjust.

(G) PANEL RECORD.—The record of proceedings before the binational panel shall not be considered part of the record for review pursuant to subparagraph (A) or (B).

(B) APPEAL TO SUPREME COURT OF COURT ORDERS ISSUED IN SUBPARAGRAPH (A) ACTIONS.—Notwithstanding any other provision of law, any final judgment of the United States Court of Appeals for the District of Columbia Circuit which is issued pursuant to an action brought under subparagraph (A) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under subparagraph (A) may be issued by a single Justice of the Supreme Court.

(5) LIQUIDATION OF ENTRIES.—

(A) APPLICATION.—In the case of a determination for which binational panel review is requested pursuant to article 1904 of the Agreement, the rules provided in this paragraph shall apply, notwithstanding the provisions of subsection (c).

(B) GENERAL RULE.—In the case of a determination for which binational panel review is requested pursuant to article 1904 of the Agreement, entries of merchandise covered by such determination shall be liquidated in accordance with the determination of the administering authority or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the administering authority of notice of a final decision of a binational panel, or of an extraordinary challenge committee, not in harmony with that determination. Such notice of a decision shall be published within 10 days of the date of the issuance of the panel or committee decision.

(C) SUSPENSION OF LIQUIDATION.—

(i) IN GENERAL.—Notwithstanding the provisions of subparagraph (B), in the case of a determination described in clause (iii) or (vi) of subsection (a)(2)(B) for which binational panel review is requested pursuant to article 1904 of the Agreement, the administering authority, upon request of an interested party who was a party to the proceeding in connection with which the matter arises and who is a participant in the binational panel review, shall order the continued suspension of liquidation of those entries of merchandise covered by the determination that are involved in the review pending the final disposition of the review.

(ii) NOTICE.—At the same time as the interested party makes its request to the administering authority under clause (i), that party shall serve a copy of its request on the United States Secretary, the Canadian

Secretary, and all interested parties who were parties to the proceeding in connection with which the matter arises.

(iii) APPLICATION OF SUSPENSION.—If the interested party requesting continued suspension of liquidation under clause (i) is a foreign manufacturer, producer, or exporter, or a United States importer, the continued suspension of liquidation shall apply only to entries of merchandise manufactured, produced, exported, or imported by that particular manufacturer, producer, exporter, or importer. If the interested party requesting the continued suspension of liquidation under clause (i) is an interested party described in subparagraph (C), (D), (E), or (F) of section 771(9), the continued suspension of liquidation shall apply only to entries which could be affected by a decision of the binational panel convened under chapter 19 of the Agreement.

(iv) JUDICIAL REVIEW.—Any action taken by the administering authority or the United States Customs Service under this subparagraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(6) INJUNCTIVE RELIEF.—Except for cases under paragraph (4)(B), in the case of a determination for which binational panel review is requested pursuant to article 1904 of the Agreement, the provisions of subsection (c)(2) shall not apply.

(7) IMPLEMENTATION OF INTERNATIONAL OBLIGATIONS UNDER ARTICLE 1904.—

(A) IN GENERAL.—If a determination is referred to a binational panel or extraordinary challenge committee under the Agreement and the panel or committee makes a decision remanding the determination to the administering authority or the Commission, the administering authority or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with the decision of the panel or committee. Any action taken by the administering authority or the Commission under this paragraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(B) APPLICATION IF SUBPARAGRAPH (A) HELD UNCONSTITUTIONAL.—In the event that the provisions of subparagraph (A) are held unconstitutional under the provisions of subparagraphs (A) and (H) of paragraph (4), the provisions of this subparagraph shall take effect. In such event, the President is authorized on behalf of the United States to accept, as a whole the decision of a binational panel or extraordinary challenge committee remanding the determination to the administering authority or the Commission within the period specified by the panel or committee. Upon acceptance by the President of such a decision, the adminis-

tering authority or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with such decision. Any action taken by the President, the administering authority, or the Commission under this subparagraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(8) REQUESTS FOR BINATIONAL PANEL REVIEW.—

(A) INTERESTED PARTY REQUESTS FOR BINATIONAL PANEL REVIEW.—An interested party who was a party to the proceeding in which a determination is made may request binational panel review of such determination by filing a request with the United States Secretary by no later than the date that is 30 days after the date described in subparagraph (A) or (B) of subsection (a)(5) that is applicable to such determination. Receipt of such request by the United States Secretary shall be deemed to be a request for binational panel review within the meaning of article 1904(4) of the Agreement. Such request shall contain such information and be in such form, manner, and style as the administering authority, in consultation with the Commission, shall prescribe by regulations.

(B) SERVICE OF REQUEST FOR BINATIONAL PANEL REVIEW.—

(i) SERVICE BY INTERESTED PARTY.—If a request for binational panel review of a determination is filed under subparagraph (A), the party making the request shall serve a copy, by mail or personal service, on any other interested party who was a party to the proceeding in connection with which the matter arises, and on the administering authority or the Commission, as appropriate.

(ii) SERVICE BY UNITED STATES SECRETARY.—If an interested party to the proceeding requests binational panel review of a determination by filing a request with the Canadian Secretary, the United States Secretary shall serve a copy of the request by mail on any other interested party who was a party to the proceeding in connection with which the matter arises, and on the administering authority or the Commission, as appropriate.

(C) LIMITATION ON REQUEST FOR BINATIONAL PANEL REVIEW.—Absent a request by an interested party under subparagraph (A), the United States may not request binational panel review under article 1904 of the Agreement of a determination.

(9) REPRESENTATION IN PANEL PROCEEDINGS.—In the case of binational panel proceedings convened under chapter 19 of the Agreement, the administering authority and the Commission shall be represented by attorneys who are employees of the administering authority or the Commission, respectively. Interested parties who were parties to the proceeding in connection with

which the matter arises shall have the right to appear and be represented by counsel before the binational panel.

(10) NOTIFICATION OF CLASS OR KIND RULINGS.—In the case of a determination which is described in paragraph (2)(B)(vi) of subsection (a) and which is subject to the provisions of paragraph (2), the administering authority, upon request, shall inform any interested person of the date on which the Government of Canada received notice of the determination under article 1904(4) of the Agreement.

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Part IV—Transportation in Bond and Warehousing of Mechandise

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SEC. 562. MANIPULATION IN WAREHOUSE.

Unless by special authority of the Secretary of the Treasury, no merchandise shall be withdrawn from bonded warehouse in less quantity than an entire bale, cask, box, or other package; or, if in bulk, in the entire quantity imported or in a quantity not less than one ton weight. All merchandise so withdrawn shall be withdrawn in the original packages in which imported unless, upon the application of the importer, it appears to the appropriate customs officer that it is necessary to the safety or preservation of the merchandise to repack or transfer the same **[**: *Provided,* That upon permission therefor being granted by the Secretary of the Treasury, and under customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose and be withdrawn therefrom for exportation to a foreign country or for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, without payment of the duties, or for consumption, upon payment of the duties accruing thereon, in its condition and quantity, and at its weight, at the time of withdrawal from warehouse, with such additions to or deductions from the final appraised value as may be necessary by reason of change in condition.**]** *; exept that upon permission therefor being granted by the Secretary of the Treasury, and under customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose and be withdrawn therefrom without payment of duties—*

(1) for exportation to Canada, but on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, such exemption from the payment of duties applies only in the case of the exportation to Canada of merchandise that—

(A) is only cleaned, sorted or repacked in a bonded warehouse, or

(B) is a drawback eligible good under section 204(a) of such Act of 1988;

(2) for exportation to any foreign country except Canada; and

(3) for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Island, Kingman Reef, Johnston Island or the island of Guam.

Merchandise may be withdrawn from bonded warehouse for consumption, or for exportation to Canada if the duty exemption under paragraph (1) of the preceding sentence does not apply, upon the payment of duties accuring theron, in its condition and quantity, and at its weight, at the time of withdrawal form warehouse, with such additions to or deductions from the final appraised value as may be necessary by reason of change in condition. The basis for the assessment of duties on such merchandise so withdrawn for consumption shall be the adjusted final appraised value, and if the rate of duty is based upon or regulated in any manner by the value of the merchandise, such rate shall be based upon or regulated by such adjusted final appraised value. The scouring or carbonizing of wool shall not be considered a process of manufacture within the provisions of this section. Under such regulations as the Secretary of the Treasury shall prescribe, imported merchandise which has been entered and which has remained in continuous customs custody may be manipulated in accordance with the provisions of this section under customs supervision and at the risk and expense of the consignee, but elsewhere than in a bonded warehouse, in cases where neither the protection of the revenue nor the proper conduct of customs business requires that such manipulation be done in a bonded warehouse.

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TITLE VII—COUNTERVAILING AND ANTIDUMPING DUTIES

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Subtitle D—General Provisions

SEC. 771. DEFINITIONS; SPECIAL RULES.

For purposes of this title—

(1) * * *

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(18) UNITED STATES-CANADA AGREEMENT.—The term '"United States-Canada Agreement" means the United States-Canada Free-Trade Agreement.

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SEC. 777. ACCESS TO INFORMATION.

(a) * * *

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(d) DISCLOSURE OF PROPRIETARY INFORMATION UNDER PROTECTIVE ORDERS ISSUED PURSUANT TO THE UNITED STATES-CANADA AGREEMENT.—

(1) ISSUANCE OF PROTECTIVE ORDERS.—

(A) In General.—If binational panel review of a determination under this title is requested pursuant to article 1904 of the United States-Canada Agreement, or an extraordinary challenge committee is convened under Annex 1904.13 of the United States-Canada Agreement, the administering authority or the Commission, as appropriate, may make available to authorized persons, under a protective order described in paragraph (2), a copy of all proprietary material (but not privileged material as defined by the rules of procedure referred to in article 1904(14) of the United States-Canada Agreement) in the administrative record made during the proceeding in question.

(B) Authorized persons.—For purposes of this subsection, the term "authorized persons" means—

(i) the members of, and the appropriate staff of, the binational panel or the extraordinary challenge committee, as the case may be, and the Secretariat,

(ii) counsel for parties to such panel or committee proceeding, and employees of such counsel, and

(iii) any officer or employee of the United States Government designated by the administering authority or the Commission, as appropriate, to whom disclosure is necessary in order to implement the United States-Canada Agreement with respect to such proceeding.

(C) Review.—A decision concerning the disclosure or nondisclosure of material under protective order by the administering authority or the Commission shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such decision on any question of law or fact by an action in the nature of mandamus or otherwise.

(2) Contents of protective order.—Each protective order issued under this subsection shall be in such form and contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall ensure that regulations issued pursuant to this paragraph shall be designed to provide an opportunity for participation in the binational panel proceeding equivalent to that available for judicial review of determinations by the administering authority or the Commission that are not subject to review by a binational panel.

(3) Prohibited acts.—It is unlawful for any person to violate, or to induce the violation of, any provision of a protective order issued under this subsection or to violate, or to induce the violation of, any provision of an undertaking entered into with an authorized agency of Canada to protect proprietary material during binational panel review pursuant to article 1904 of the United States-Canada Agreement.

(4) Sanctions for violation of protective orders.—Any person who is found by the administering authority or the Commission, as appropriate, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by paragraph (3)

shall be liable to the United States for a civil penalty and shall be subject to such other administrative sanctions, including, but not limited to, debarment from practice before the administering authority or the Commission, as the administering authority or the Commission determines to be appropriate. The amount of the civil penalty shall not exceed $100,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty and other sanctions shall be assessed by the administering authority or the Commission by written notice, except that assessment shall be made by the administering authority for violation, or inducement of a violation, of an undertaking entered into by any person with an authorized agency of Canada.

(5) Review of sanctions.—Any person against whom sanctions are imposed under paragraph (4) may obtain review of such sanctions by filing a notice of appeal in the United States Court of International Trade within 30 days from the date of the order imposing the sanction and by simultaneously sending a copy of such notice by certified mail to the administering authority or the Commission, as appropriate. The administering authority or the Commission shall promptly file in such court a certified copy of the record upon which such violation was found or such sanction imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the administering authority or the Commission shall be set aside by the court only if the court finds that such findings and order are not supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(6) Enforcement of sanctions.—If any person fails to pay an assessment of a civil penalty or to comply with other administrative sanctions after the order imposing such sanctions becomes a final and unappealable order, or after the United States Court of International Trade has entered final judgment in favor of the administering authority or the Commission, an action may be filed in such court to enforce the sanctions. In such action, the validity and appropriateness of the final order imposing the sanctions shall not be subject to review.

(7) Testimony and production of papers.—

(A) Authority to obtain information.—For the purpose of conducting any hearing and carrying out other functions and duties under this subsection, the administering authority and the Commission, or their duly authorized agents—

(i) shall have access to and the right to copy any pertinent document, paper, or record in the possession of any individual, partnership, corporation, association, organization, or other entity,

(ii) may summon witnesses, take testimony, and administer oaths,

(iii) and may require any individual or entity to produce pertinent documents, books, or records.

Any member of the Commission, and any person so designated by the administering authority, may sign subpoenas, and members and agents of the administering authority *and the Commission, when authorized by the administering authority or the Commission, as appropriate, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.*

(B) Witnesses and evidence.—The attendance of witnesses who are authorized to be summoned, and the production of documentary evidence authorized to be ordered, under subparagraph (A) may be required from any place in the United States at any designated place of hearing. In the case of disobedience to a subpoena issued under subparagraph (A), an action may be filed in any district or territorial court of the United States to require the attendance and testimony of witnesses and the production of documentary evidence. Such court, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any individual, partnership, corporation, association, organization or other entity, issue any order requiring such individual or entity to appear before the administering authority or the Commission, or to produce documentary evidence if so ordered or to give evidence concerning the matter in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

(C) Mandamus.—Any court referred to in subparagraph (B) shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this subsection or any order of the administering authority or the Commission made in pursuance thereof.

(D) Depositions.—For purposes of carrying out any functions or duties under this subsection, the administering authority or the Commission may order testimony to be taken by deposition. Such deposition may be taken before any person designated by the administering authority or Commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under the direction of such person, and shall then be subscribed by the deponent. Any individual, partnership, corporation, association, organization or other entity may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the administering authority or Commission, as provided in this paragraph.

(E) Fees and mileage of witnesses.—Witnesses summoned before the administering authority or the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

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SECTION 3 OF THE ACT OF JUNE 18, 1934

AN ACT To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes

SEC. 3. (a) Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the customs laws of the United States, except as otherwise provided in this Act, be brought into a zone and may be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured except as otherwise provided in this Act, and be exported, destroyed, or sent into customs territory of the United States therefrom, in the original package or otherwise; but when foreign merchandise is so sent from a zone into customs territory of the United States it shall be subject to the laws and regulations of the United States affecting imported merchandise: *Provided,* That whenever the privilege shall be requested and there has been no manipulation or manufacture effecting a change in tariff classification, the customs officer shall take under supervision any lot or part of a lot of foreign merchandise in a zone, cause it to be appraised and taxes determined and duties liquidated thereon. Merchandise so taken under supervision may be stored, manipulated, or manufactured under the supervision and regulations prescribed by the Secretary of the Treasury, and whether mixed or manufactured with domestic merchandise or not may, under regulations prescribed by the Secretary of the Treasury, be exported or destroyed, or may be sent into customs territory upon the payment of such liquidated duties and determined taxes thereon. If merchandise so taken under supervision has been manipulated or manufactured, such duties and taxes shall be payable on the quantity of such foreign merchandise used in the manipulation or manufacture of the entered article. Allowance shall be made for recoverable and irrecoverable waste; and if recoverable waste is sent into customs territory, it shall be dutiable and taxable in its condition and quantity and at its weight at the time of entry. Where two or more products result from the manipulation or manufacture of merchandise in a zone the liquidated duties and determined taxes shall be distributed to the several products in accordance with their relative value at the time of separation with due allowance for waste as provided for above: *Provided further,* That subject to such regulations respecting identity and the safeguarding of the revenue as the Secretary of the Treasury may deem necessary, articles, the growth, product, or manufacture of the United States, on which all internal-revenue taxes have been paid, if subject thereto, and articles previously imported on which duty and/or tax has been paid, or which have been admitted free of duty and tax, may be taken into a zone from the customs territory of the United States, placed under the supervision of the appropriate customs officer, and whether or not they have been combined with or made part, while in such zone, of other articles, may be brought back thereto free of quotas, duty, or tax: *Provided further,* That if in the opinion of the Secretary of the Treasury their identity has been lost, such articles not entitled to free entry by reason of noncompliance with the requirements made hereunder by the Secretary of the Treasury shall be treated when they reenter customs territory of the United States as foreign merchandise under the provisions of the tariff and internal-revenue laws in force at that time: *Provided further,* That under the rules and regulations of the controlling Federal agencies, articles which have been taken into a zone from customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage shall be considered to be exported for the purpose of—

(1) the draw-back, warehousing, and bonding, or any other provisions of the Tariff Act of 1930, as amended, and the regulations thereunder; and

(2) the statutes and bonds exacted for the payment of drawback, refund, or exemption from liability for internal-revenue taxes and for the purposes of the internal-revenue laws generally and the regulations thereunder.

Such a transfer may also be considered an exportation for the purposes of other Federal laws insofar as Federal agencies charged with the enforcement of those laws deem it advisable. Such articles may not be returned to customs territory for domestic consumption except where the Foreign-Trade Zones Board deems such return to be in the public interest, in which event the articles shall be subject to the provisions of paragraph 1615(f) of the Tariff Act of 1930, as amended: *Provided further,* That no operation involving any foreign or domestic merchandise brought into a zone which operation would be subject to any provision or provisions of section 1807, chapter 15, chapter 16, chapter 17, chapter 21, chapter 23, chapter 24, chapter 25, chapter 26, or chapter 32 of the Internal Revenue Code if performed in customs territory, or involving the manufacture of any article provided for in paragraph 367 or paragraph 368 of the Tariff Act of 1930, shall be permitted in a zone except those operations (other than rectification of distilled spirits and wines, or the manufacture or production of alcoholic products unfit for beverage purposes) which were permissible under this Act prior to July 1, 1949: *Provided further,* That articles produced or manufactured in a zone and exported therefrom shall on subsequent importation into the customs territory of the United States be subject to the import laws applicable to like articles manufactured in a foreign country, except that articles produced or manufactured in a zone exclusively with the use of domestic merchandise, the identity of which has been maintained in accordance with the second proviso of this section, may, on such importation, be entered as American goods returned: *Provided further, That with the exception of draw-back eligible goods under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, no article manufactured or otherwise changed in condition (except a change by cleaning, testing or repacking) shall be exported to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of such Act of 1988, without the payment of a duty that shall be payable on the article in its condition and quantity, and at its weight, at the time* *of its exportation to Canada unless the privilege in the first proviso to this subsection was requested.*

* * * * * * *

MEAT IMPORT ACT OF 1979

SEC. 2. (a) This section may be cited as the "Meat Import Act of 1979".

(b) For purposes of this section—

(1) The term "entered" means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

(2) The term "meat articles" means the aticles provided for in the Tariff Schedules of the United States (19 U.S.C. 1202) under—

(A) item 106.10 (relating to fresh, chilled, or frozen cattle meat);

(B) items 106.22 and 106.25 (relating to fresh, chilled, or frozen meat of goats and sheep (except lambs)); and

(C) items 107.55 and 107.62 (relating to prepared and preserved beef and veal (except sausage)), if the articles are prepared, whether fresh, chilled, or frozen but not otherwise preserved.

Such term does not include any article described in subparagraph (A), (B), or (C) originating in Canada (as determined in accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988).

(3) The term "Secretary" means the Secretary of Agriculture.

(c) The aggregate quantity of meat articles which may be entered in any calendar year after 1979 may not exceed [1,204,600,000] *1,147,600,000* pounds; except that this aggregate quantity shall be—

(1) increased or decreased for any calendar year by the same percentage that the estimated average annual domestic commercial production of meat articles in that calendar year and the 2 preceding calendar years increases or decreases in comparison with the average annual domestic commercial production of meat articles during calendar years 1968 through 1977; and

(2) adjusted further under subsection (d).

For purposes of paragraph (1), the estimated annual domestic commercial production of meat articles for any calendar year does not include the carcass weight of live cattle specified in items 100.40, 100.43, 100.45, 100.53, and 100.55 of such Schedules entered during such year.

* * * * * * *

(f)(1) If the aggregate quantity estimated before any calendar quarter by the Secretary under subsection (e)(2) is 110 percent or more of the aggregate quantity estimated by him under subsection (e)(1), and if there is no limitation in effect under this section for such calendar year with respect to meat articles, the President shall by proclamation limit the total quantity of meat articles which may be entered during such calendar year to the aggregate quantity estimated for such calendar year by the Secretary under subsection (e)(1); except that no limitation imposed under this paragraph for any calendar year may be less than [1,250,000,000] *(A) 1,193,000,000 pounds if no import limitation on Canadian products is in effect under subsection (l), or (B) 1,250,000,000 pounds if an import limitation on Canadian products is in effect under subsection (l)* pounds. The President shall include in the articles subject to any limit proclaimed under this paragraph any article of meat provided for in item 107.61 of the Tariff Schedules of the United States (relating to high-quality beef specially processed into fancy cuts).

* * * * * * *

(i) The Secretary shall allocate the total quantity proclaimed under subsection (f)(1) and any increase in such quantity provided for under subsection (g) among supplying countries *other than Canada* on the basis of the shares of the United States market for meat articles such countries *other than Canada* supplied during a representative period. Notwithstanding the preceding sentence, due account may be given to special factors which have affected or may affect the trade in meat articles or cattle. The Secretary shall certify such allocations to the Secretary of the Treasury.

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[(1) The Secretary of Agriculture shall study the regional economic impact of imports of meat articles and report the results of his study, together with any recommendations (including recommendations for legislation, if any) to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate not later than June 30, 1980.]

(1) If the President—

(1) has—

(A) proclaimed limitations on meat articles under the preceding provisions of this section, or

(B) entered into one or more agreements other than with Canada regarding meat articles pursuant to section 204 of the Agricultural Act of 1956; and

(2) determines that the Government of Canada has not taken equivalent action;

the President may by proclamation limit the total quantities of articles described in subsection (b)(2)(A), (B), and (C) and originating in Canada (as determined in accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988) that may enter the United States. A limitation imposed under the preceding sentence shall be only to the extent that, and only for such period of time as, the President determines sufficient to prevent frustration as, the President determines sufficient to prevent frustration of the limitations placed on meat articles imported from other countries under this section or actions taken with respect to meat articles under agreements negotiated pursuant to section 204 of the Agricultural Act of 1956.

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SECTION 22 OF THE AGRICULTURAL ADJUSTMENT ACT

* * * * * * *

TITLE I—AGRICULTURAL ADJUSTMENT

* * * * * * *

SEC. 22. (a) * * *

* * * * * * *

(f) No trade agreement or other international agreement heretofore or hereafter entered into by the United States shall be applied in a manner inconsistent with the requirements of this section ; *except that the President may, pursuant to articles 705.5 and 707 of the United States-Canada Free-Trade Agreement, exempt products of Canada from any import restriction imposed under this section.*

ACT OF MARCH 4, 1913

CHAP. 145.—An Act Making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and fourteen

* * * * * * *

BUREAU OF ANIMAL INDUSTRY

SALARIES, BUREAU OF ANIMAL INDUSTRY: One chief of bureau, $5,000; one chief clerk, $2,500; one editor and compiler, $2,250; six clerks, class four; one clerk $1,680; twelve clerks, class three; to class clerks, at $1,500 each, twenty-two clerks, class two; two clerks, at $1,380 each; three clerks, at $1,320 each; one clerk, $1,300; one clerk, $1,260; thirty-nine clerks, class one; one clerk, $1,100; one clerk, $1,080; fifty clerks, at $1,000 each; two clerks, at $960 each; sixty-four clerks, at $900 each; one architect, $2,000; one architect, $900; one illustrator, $1,400; four inspector's assistants, at $1,000 each; twelve inspector's assistants, at $840 each; one laboratory assistant, $1,200; two laboratory assistants, at $900 each; one laboratory helper, $1,020; two laboratory helpers, at $840 each; one laboratory helper, $720; one laboratory helper, $600; one laboratory helper, $480; one instrument maker, $1,200; one carpenter, $1,100; two carpenters, at $1,000 each; one messenger and custodian, $1,200; one messenger and custodian $1,000; nine messengers, skilled laborers, or laborers, at $840 each; ten messengers, skilled laborers, or laborers, at $720 each; twenty-three messengers, messenger boys, or laborers, at $480 each; six messengers or messenger boys, at $360 each; one skilled laborer, $1,000; thirty-three skilled laborers, at $900 each; two skilled laborers, at $840 each; seven skilled laborers, at $720 each; one skilled laborer or laborer, $780; two laborers or messengers, at $660 each; nine laborers, messengers, or messenger boys, at $600 each; three laborers, messengers or messenger boys, at $540 each; one watchman, $720; one charwoman, $600; one charwoman, $540; eleven charwomen, at $480 each; four charwomen, at $360 each; one charwoman, $300; two charwomen, at $240 each; in all, $359,250.

* * * * * * *

That from and after July first, nineteen hundred and thirteen, it shall be unlawful for any person, firm, or corporation to prepare, sell, barter, or exchange in the District of Columbia, or in the Territories, or in any place under the jurisdiction of the United States, or to ship or deliver for shipment from one State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, any worthless, contaminated, dangerous, or harmful virus, serum, toxin, or analogous product intended for use in the treatment of domestic animals, and no person, firm, or corporation shall prepare, sell, barter, exchange, or ship as aforesaid any virus, serum, toxin, or analogous product manufactured within the United States and intended for use in the treatment of domestic animals, unless and until the said virus, serum, toxin, or analogous product shall have been prepared, under and in compliance with regulations prescribed by the Secretary of Agriculture, at an establishment holding an unsuspended and unrevoked license issued by the Secretary of Agriculture as hereinafter authorized. [That the importation into the United States, without a permit from the Secretary of Agriculture, of any virus, serum, toxin, or analogous product for use in the treatment of domestic animals, and the importation of any worthless, contaminated, dangerous, or harmful virus, serum, toxin, or analogous product for use in the treatment of domestic animals, are hereby prohibited.] *The importation into the United States of any virus, serum, toxin, or analogous product for use in the treatment of domestic animals, and the importation of any worthless, contaminated, dangerous, or harmful virus, serum, toxin, or analogous product for use in the treatment of domestic animals, is prohibited without (1) a permit from the Secretary of Agriculture, or (2) in the case of an article originating in Canada, such permit or, in lieu of such permit, such certification by Canada as may be prescribed by the Secretary of Agriculture.* The Secretary of Agriculture is hereby authorized to cause the Bureau of Animal Industry to examine and inspect all viruses, serums, toxins, and analogous products, for use in the treatment of domestic animals, which are being imported or offered for importation into the United States, to determine whether such viruses, serums, toxins, and analogous products are worthless, contaminated, dangerous, or harmful, and if it shall appear that any such virus, serum, toxin, or analogous product, for use in the treatment of domestic animals, is worthless, contaminated, dangerous, or harmful, the same shall be denied entry and shall be destroyed or returned at the expense of the owner or importer. That the Secretary of Agriculture be, and hereby is, authorized to make and promulgate from time to time such rules and regulations as may be necessary to prevent the preparation, sale, barter, exchange, or shipment as aforesaid of any worthless, contaminated, dangerous, or harmful virus, serum, toxin, or analogous product for use in the treatment of domestic animals, and to issue, suspend, and revoke licenses for the maintenance of establishments for the preparation of viruses, serums, toxins, and analogous products, for use in the treatment of domestic animals, intended for sale, barter, exchange, or shipment as aforesaid. The Secretary of Agriculture is hereby authorized to issue permits for the importation into the United States of viruses, serums, toxins, and analogous products, for use in the treatment of domestic animals, which are not worthless, contaminated, dangerous, or harmful. All licenses issued under authority of this Act to establishments where such viruses, serums, toxins, or analogous products are prepared for sale, barter, exchange, or shipment as aforesaid, shall be issued on condition that the licensee shall permit the inspection of such establishments and of such products and their preparation; and the Secretary of Agriculture may suspend or revoke any permit or license issued under authority of this Act, after opportunity for hearing has been granted the licensee or importer, when the Secretary of Agriculture is satisfied that such license or permit is being used to facilitate or effect the preparation, sale, barter, exchange, or shipment as aforesaid, or the importation into the United States of any worthless, contaminated, dangerous, or harmful virus, serum, toxin, or analogous product for use in the treatment of domestic animals. That any officer, agent, or employee of the Department of Agriculture duly authorized by the Secretary of Agriculture for the purpose may, at any hour during the daytime or nighttime, enter and inspect any establishment licensed under this Act where any virus, serum, toxin, or analogous product for use in the treatment of domestic animals is prepared for sale, barter, exchange, or shipment as aforesaid. That any person, firm, or corporation who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not exceeding $1,000 or by imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court. That there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be expended as the Secretary of Agriculture may direct, for the purposes and objects of this Act, the sum of $25,000, which appropriation shall become available on July first, nineteen hundred and thirteen, and may be expended at any time before July first, nineteen hundred and fourteen;

* * * * * * *

SECTION 302 OF THE FEDERAL SEED ACT

SEC. 302. (a) * * *

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[(e) The provisions of this title requiring certain seeds to be stained shall not apply when such seed will not be sold within the United States and will be used for seed production only by or for the importer or consignee: *Provided,* That the importer of record or consignee files a statement in accordance with the rules and regulations prescribed under section 402 of this Act certifying that such seed will be used only for seed production by or for the importer or consignee.]

(e) The provisions of this title requiring certain seeds to be stained shall not apply—

(1) to alfalfa or clover seed originating in Canada, or

(2) when seeds otherwise required to be stained will not be sold within the United States and will be used for seed production only by or for the importer or consignee and the importer of

record or consignee files a statement in accordance with the rules and regulations prescribed under section 402 certifying that such seeds will be used only for seed production by or for the importer or consignee.

FEDERAL PLANT PEST ACT

* * * * * * *

SEC. 103. (a) [No] *Except as provided in subsection (c), no* person shall move any plant pest from a foreign country into or through the United States, or interstate, or accept delivery of any plant pest moving from any foreign country into or through the United States, or interstate, unless such movement is authorized under general or specific permit from the Secretary and is made in accordance with such conditions as the Secretary may prescribe in the permit and in such regulations as he may promulgate under this section to prevent the dissemination into the United States, or interstate, of plant pests.

(b) The Secretary may refuse to issue a permit for the movement of any plant pest when, in his opinion, such movement would involve a danger of dissemination of such pests. The Secretary may permit the movement of host materials otherwise barred under the Plant Quarantine Act when they must necessarily accompany the plant pest to be moved.

(c) No person shall move any plant pest from Canada into or through the United States or accept delivery of any plant pest moving from Canada into or through the United States, unless such movement is made in accordance with such regulations as the Secretary may promulgate under this section to prevent the dissemination into the United States of plant pests.

SEC. 104. (a) [Any letter] *Except as provided in subsection (b), any letter,* parcel, box, or other package containing any plant pest, whether sealed as letter-rate postal matter or not, is hereby declared to be nonmailable, and will not knowingly be conveyed in the mail or delivered from any post office or by any mail carrier, except when accompanied by a copy of a permit issued under this Act.

(b) Any letter, parcel, box, or other package from Canada containing any plant pest, whether sealed as letter-rate postal matter or not, is declared to be nonmailable, and shall now knowingly be conveyed in the mail or delivered from any post office or by any mail carrier, except in accordance with such regulations as the Secretary may promulgate under this section to prevent the dissemination into the United States of plant pests.

[(b)] *(c)* Nothing in this Act shall authorize any person to open any letter or other sealed matter except in accordance with the postal laws and regulations.

[(c)] *(d)* The prohibitions of this Act shall not apply to any employee of the United States in the performance of his duties in handling mail.

* * * * * * *

Act of August 20, 1912

CHAP. 308.—An Act to regulate the importation of nursery stock and other plants and plant products; to enable the Secretary of Agriculture to establish and maintain quarantine districts for plant diseases and insect pests; to permit and regulate the movement of fruits, plants, and vegetables therefrom, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any person to import or offer for entry into the United States any nursery stock unless and until a permit shall have been issued therefor by the Secretary of Agriculture, under such conditions and regulations as the said Secretary of Agriculture may prescribe, and unless such nursery stock shall be accompanied by a certificate of inspection, in manner and form as required by the Secretary of Agriculture, of the proper official of the country from which the importation is made, to the effect that the stock has been throughly inspected and is believed to be free from injurious plant diseases and insect pests: [*Provided*] *Provided, That the Secretary of Agriculture may waive the permit requirement for nursery stock imported or offered for entry from Canada: Provided further,* That the Secretary of Agriculture shall issue the permit for any particular importation of nursery stock when the conditions and regulations as prescribed in this Act shall have been complied with: *Provided further,* That nursery stock may be imported for experimental or scientific purposes by the Department of Agriculture upon such conditions and under such regulations as the said Secretary of Agriculture may prescribe: *And provided further,* That nursery stock imported from countries where no official system of inspection for such stock is maintained may be admitted upon such conditions and under such regulations as the Secretary of Agriculture may prescribe. *And provided further,* That the Secretary of Agriculture is authorized to limit entry of nursery stock from foreign countries under such rules and regulations as he may deem necessary, including the requirement, if necessary, that such nursery stock be grown under postentry quarantine by or under the supervision of the United States Department of Agriculture for the purpose of determining whether imported nursery stock may be infested or infected with plant pests not discernible by port-of-entry inspection and provided that if imported nursery stock is found to be infested or infected with such plant pests, he is authorized to prescribe remedial measures as he may deem necessary to prevent the spread thereof.

Sec. 2. That it shall be the duty of the Secretary of the Treasury promptly to notify the Secretary of Agriculture of the arrival of any nursery stock at port of entry; that the person receiving stock at port of entry shall, immediately upon entry and before such stock is delivered for shipment or removed from the port of entry, advise the Secretary of Agriculture or, at his direction, the proper State, Territorial, or District official of the State or Territory or the District to which such nursery stock is destined, or both, as the Secretary of Agriculture may elect, of the name and address of the consignee, the nature and quantity of the stock it is proposed to ship, and the country and locality where the same was grown. That no person shall ship or offer for shipment from one State or Territory or District of the United States into any other State or Territory or District, any nursery stock imported into the United States without notifying the Secretary of Agriculture or, at his direction, the proper State, Territorial, or District official of the State or Territory or District to which such nursery stock is destined, or both, as the Secretary of Agriculture may elect, immediately upon the delivery of the said stock for shipment, of the name and address of the consignee, of the nature and quantity of stock it is proposed to ship, and the country and locality where the same was grown, unless and until such imported stock has been inspected by the proper offical of a State, Territory, or District of the United States. *This section shall not apply to nursery stock that arrives from, or is imported from, Canada.*

* * * * * * *

SECTION 4 OF THE FEDERAL NOXIOUS WEED ACT

SEC. 4. [(a) No person shall knowingly move any noxious weed, identified in a regulation promulgated by the Secretary, into or through the United States or interstate, unless such movement is authorized under general or specific permit from the Secretary and is made in accordance with such conditions as the Secretary may prescribe in the permit and in such regulations as he may promulgate under this Act to prevent the dissemination into the United States, or interstate, of such noxious weeds.]

(a) No person shall knowingly move any noxious weed identified in a regulaton promulgated by the Secretary into or through the United States or interstate, unless such movement is—

(1) from Canada, or authorized under general or specific permit from the Secretary; and

(2) made in accordance with such conditions as the Secretary may prescribe in the permit and in such regulations as the Secretary may prescribe under this Act to prevent the dissemination into the United States, or interstate, of such noxious weeds.

(b) The Secretary may refuse to issue a permit for the movement of any such noxious weed when, in his opinion, such movement would involve a danger of dissemination of such noxious weeds into the United States or interstate.

(c) No person shall knowingly sell, purchase, barter, exchange, give, or receive any such noxious weed which has been moved in violation of subsection (a), or knowingly deliver or receive for transportation or transport, in interstate or foreign commerce, and advertisement to sell, purchase, barter, exchange, give, or receive any such noxious weed which is prohibited from movement in such commerce under this Act.

SECTION 7 OF THE EXPORT ADMINISTRATION ACT OF 1979

SHORT SUPPLY CONTROLS

SEC. 7. (a) * * *

* * * * * * *

(d) DOMESTICALLY PRODUCED CRUDE OIL.—Notwithstanding any other provision of this Act and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), no domestically produced crude oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) (except any such crude oil which (A) is exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from that country to the United States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States as described in paragraph (2)(A)(ii) of this subsection, [or] (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States, *or (C) is transported to Canada, to be consumed therein, in amounts not to exceed an annual average of 50,000 barrels per day, in addition to exports under subparagraphs (A) and (B), except that any ocean transportation of such oil shall be by vessels documented under section 12106 of title 46, United States Code)* may be exported from the United States, or any of its territories and possessions, subject to paragraph (2) of this subsection.

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SECTION 161 OF THE ATOMIC ENERGY ACT OF 1954

SEC. 161. GENERAL PROVISIONS.—In the performance of its functions the Commission is authorized to—

a. * * *

* * * * * * *

v. (A) enter into contracts with persons licensed under sections 53, 63, 103 or 104 for such periods of time as the Commission may deem necessary or desirable to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Commission; and

(B) enter into contracts to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Commission in accordance with and within the period of an agreement for cooperation arranged pursuant to section 123 while comparable services are made available pursuant to paragraph (A) of this subsection:

Provided, That (i) prices for services under paragraph (A) of this subsection shall be established on a nondiscriminatory basis; (ii) prices for services under paragraph (B) of this subsection shall be no less than prices under paragraph (A) of this subsection; and (iii) any prices established under this subsection shall be on a basis of recovery of the Government's costs over a reasonable period of time: *And provided further,* That the Commission, to the extent necessary to assure that maintenance of a viable domestic uranium industry, shall not offer such services for source or special nuclear materials of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States. *For purposes of this subsection and of section 305 of Public Law 99-591 (100 Stat. 3341-209, 210), "foreign origin" excludes source or special nuclear material originating in Canada.* The Commission shall establish criteria in writing setting forth the terms and conditions under which services provided under this subsection shall be made available including the extent to which such services will be made available for source or special nuclear material of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States: *Provided,* That before the Commission establishes such criteria, the proposed criteria shall be submitted to the Joint Committee, and a period of forty-five days shall elapse while Congress is in session (in computing the forty-five days there shall be excluded the days in which either House is not in session because of adjournment for more than three days) unless the Joint Committee by resolution in writing waives the conditions of, or all or any portion of, such forty-five-day period.

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SECTION 308 OF THE TRADE AGREEMENTS ACT OF 1979

DEFINITIONS

SEC. 308. As used in this title—

(1) * * *

* * * * * * *

(4) ELIGIBLE PRODUCTS.—

(A) IN GENERAL.—The term "eligible product" means, with respect to any foreign country or instrumentality, a product or service of that country or instrumentality which is covered under the Agreement for procurement by the United States.

(B) RULE OF ORIGIN.—An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(C) LOWERED TRESHOLD FOR CERTAIN PRODUCTS AS A CONSEQUENCE OF UNITED STATES-ISRAEL FREE TRADE AREA PROVISIONS.—The term "eligible product" includes a product or service of Israel having a contract value of $50,000 or more which would be covered for procurement by the United States under the Agreement on Government Procurements as in effect on the date on which the Agreement on the Establishment of a Free Trade Area between the Government of Israel enters into force, but for the SDR 150,000 threshold provided for in article I(1)(b) of the Agreement on Government Procurement.

(D) LOWERED THRESHOLD FOR CERTAIN PRODUCTS AS A CONSEQUENCE OF UNITED STATES-CANADA FREED-TRADE AGREEMENT.—Except as otherwise agreed by the United States and Canada under paragraph 3 of article 1304 of the United States-Canada Free-Trade Agreement, the term "eligible product" includes a product or service of Canada having a contract value of $25,000 or more that would be covered for procurement by the United States under the GATT Agreement on Government Procurement, but for the SDR threshold provided for in article I(1)(b) of the GATT Agreement on Government Procurement.

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SECTION 214 OF THE IMMIGRATION AND NATIONALITY ACT

ADMISSION OF NONIMMIGRANTS

SEC. 214. (a) * * *

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(e) Notwithstanding any other provision of this Act, an alien who is a citizen of Canada and seeks to enter the United States under and pursuant to the provisions of Annex 1502.1 (United States of America), Part C—Professionals, of the United States-Canada Free-Trade Agreement to engage in business activities at a professional level as provided for therein may be admitted for such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor.

SECTION 5136 OF THE REVISED STATUTES

SEC. 5136. Upon duly making and filing articles of association and an organization certificate, the association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

First. To adopt and use a corporate seal.

* * * * * * *

Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissor notes, drafts, bill or exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this title. The business of dealing in securities and stock by the association shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock: *Provided,* That the association may purchase for its own account investment securities under such limitations and restrictions as the Comptroller of the Currency may by regulation prescribe. In no event shall the total amount of the investment securities of any one obligor or maker, held by the association for its own account, exceed at any time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund, except that this limitation shall not require any association to dispose of any securities lawfully held by it on the date of enactment of the Bank Act of 1935. As used in this section the term "investment securities;" shall mean marketable obligations evidencing indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes and/or debentures commonly known as investment securities under such further definition of the term "investment securities" as may by regulation be prescribed by the Comptroller of the Currency. Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation. The limitations and restrictions herein contained as to dealing in, underwriting and purchasing for its own account, investment securities shall not apply to obligations of the United States, or of any political subdivision thereof, or obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969, or obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the thirteen banks for cooperatives or any of them or the Federal Home Loan Banks or obligations which are insured by the Secretary of Housing and Urban Development under title XI of the National House Act; or obligations which are insured by the Secretary of Housing and Urban Development (hereafter in this sentence referred to as the "Secretary") pursuant to section 207 of the National House Act, if the debentures to be issued in payment of such insured obligations are guaranteed as to principal and interest by the United States, or obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association or obligations of the Federal Financing Bank or obligations of the Environmental Financing Authority or obligations or other instruments or securities of the Student Loan Marketing Association, in which the local public agency agrees to borrow from said Secretary, and said Secretary agrees to lend to said local public agency, or such obligations of any local public agency (as defined in section 110(h) of the Housing Act of 1949) as are secured by an agreement between the local public agency and the Secretary monies in an aggregate amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay, when due, the interest on and all installments (including the final installment) of the principal of such obligations, which monies under the terms of said agreement are required to be used for such payments, or such obligations of a public housing agency (as defined in the United States Housing Act of 1937, as amended) as are secured (1) by an agreement between the public housing agency and the secretary in which the public housing agency agrees to borrow from the Secretary, and the secretary agrees to lend to the public housing agency prior to the maturity of such obligations, monies in an amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of such obligations with interest to maturity thereon, which monies under the terms of said agreement are required to be used for the purposes of paying the principal of and the interest on such obligations at their maturity, (2) by a pledge of annual contributions under an annual contributions contract between such public housing agency and the Public Housing Administration if such contract shall contain the covenant by the Public Housing Administration which is authorized by section of the United States Housing Act of 1937, as amended, and if the maximum sum and the maximum period specified in such contract pursuant to said section 6(g) shall not be less than the annual amount and the period for payment which are requisite to provide for the payment when due of all installments of principal and interest of such obligations, or (3) by a pledge of both annual contributions under an annual contributions contract containing the covenant by the Secretary which is authorized by section 6(g) of the United States Housing Act of 1937, and a loan under an agreement between the local public housing agency and the Secretary in which the public housing agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the public housing agency, prior to the maturity of the obligations involved, moneys in an amount which (together with any other moneys irrevocably committed under the annual contributions contract to the payment of principal and interest of such obligations) will suffice to provide for the payment when due of all installments of principal and interest on such obligations, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal and interest on such obligations at their maturity: *Provided,* That in carrying on the business commonly known as the safe-deposit business the association shall not invest in the capital stock of a corporation organized under the law of any State to conduct a safe-deposit business in an amount in excess of 15 per centum of the capital stock of the association actually paid in and unimpaired and 15 per centum of its unimpaired surplus. The limitations and restrictions herein contained as to dealing in and underwriting investment securities shall not apply to obligations issued by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank or the Inter-American Investment Corporation, or obligations issued by any State or political subdivision or any agency of a State or political subdivision for housing, university, or dormitory purposes, which are at the time eligible for purchase by a national bank for its own account, not to bonds, notes and other obligations issued by the Tennessee Valley Authority or by the United States Postal Service: *Provided,* That no association shall hold obligations issued by any of said organizations as a result of underwriting, dealing, or purchasing for its own account (and for this purpose obligations as to which it is under commitment shall be deemed to be held by it) in a total amount exceeding at any one time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation authorized to be created pursuant to title IX of the Housing and Urban Development Act of 1968, and may make investments in a partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of that Act. Notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock issued by any State housing corporation incorporated in the State in which the association is located and may make investments in loans and commitments for loans to any such corporation: *Provided,* That in no event shall the total amount of such stock held for its own account and such investments in loans and commitments made by the association exceed at any time 5 per centum of its capital stock actually paid in and unimpaired plus 5 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation organized solely for the purpose of making loans to farmers and ranchers for agricultural purposes, including the breeding, raising, fattening, or marketing of livestock. However, unless the association owns at least 80 per centum of the stock of such agricultural credit corporation the amount invested by the association at any one time in the stock of such corporation shall not exceed 20 per centum of the unimpaired capital and surplus of the association. *Provided further,* That notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock of a bank insured by the Federal Deposit Insurance Corporation or a holding company which owns or controls such an insured bank if the stock of such bank or company is owned exclusively (except to the extent directors' qualifying shares are required by law) by depository institutions and such bank or company and all subsidiaries thereof are engaged exclusively in providing services for other depository institutions and their officers, directors, and employees, but in no event shall the total amount of such stock held by the association in any bank or holding company exceed at any time 10 per centum of the association's capital stock and paid in and unimpaired surplus and in no event shall the purchase of such stock result in an association's acquiring more than 5 per centum of any class of voting securities of such bank or company. The limitations and restrictions contained in this paragraph as to an association purchasing for its own account investment securities shall not apply to securities that (A) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); or (B) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), subject to such regulations as the Comptroller of the Currency may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both. *A national banking association may deal in, underwrite, and purchase for such association's own account qualified Canadian government obligations to the same extent that such association may deal in, underwrite, and purchase for such association's own account obligations of the United States or general obligations of any State or of any political subdivision thereof. For purposes of this paragraph—*

(1) the term "qualified Canadian government obligations" means any debt obligation which is backed by Canada, any Province of Canada, or any political subdivision of any such Province to a degree which is comparable to the liability of the United States, any State, or any political subdivision thereof for any obligation which is backed by the full faith and credit of the United States, such State, or such political subdivision, and such term includes any debt obligation of any agent of Canada or any such Province or any political subdivision of such Province if—

(A) the obligation of the agent is assumed in such agent's capacity as agent for Canada or such Province or such political subdivision; and

(B) Canada, such Province, or such political subdivision on whose behalf such agent is acting with respect to such obligation is ultimately and unconditionally liable for such obligation; and

(2) the term "Province of Canada" means a Province of Canada and includes the Yukon Territory and the Northwest Territories and their successors.

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UNITED STATES CODE

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TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

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PART IV—JURISDICTION AND VENUE

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CHAPTER 95—COURT OF INTERNATIONAL TRADE

Sec.
1581. Civil actions against the United States and agencies and officers thereof.
1582. Civil actions commenced by the United States.
1583. Counterclaims, cross-claims, and third-party actions
1584. Civil actions under the United States-Canada Free-Trade Agreement.
1585. Powers in law and equity.

§1581. Civil actions against the United States and agencies and officers thereof

(a) * * *

* * * * * * *

(i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)-(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—

(1) revenue from imports or tonnage;

(2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;

(3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or

(4) administration and enforcement with respect to the matters referred to in paragraphs (1)–(3) of this subsection and subsections (a)–(h) of this section.

This subsection shall not confer jurisdiction over an antidumping or countervailing duty determination which is reviewable either by the Court of International Trade under section 516A(a) of the Tariff Act of 1930 or by a binational panel under article 1904 of the United States-Canada Free-Trade Agreement and section 516A(g) of the Tariff Act of 1930.

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§1584. Civil actions under the United States-Canada Free-Trade Agreement

The United States Court of International Trade shall have exclusive jurisdiction of any civil action which arises under section 777(d) of the Tariff Act of 1930 and is commenced by the United States to enforce administrative sanctions levied for violation of a protective order or an undertaking.

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PART VI—PARTICULAR PROCEEDINGS

CHAPTER 151—DECLARATORY JUDGMENTS

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§2201. Creation of remedy

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986 [or] , a proceeding under section 505 or 1146 of title II, *or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of Canadian merchandise, as determined by the administering authority,* any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

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CHAPTER 169—COURT OF INTERNATIONAL TRADE PROCEDURE

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§2643. Relief

(a) * * *

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(c)(1) Except as provided in paragraphs (2), (3), **[**and (4)**]** *(4), and (5)* of this subsection, the Court of International Trade may, in addition to the orders specified in subsections (a) and (b) of this section, order any other form of relief that is appropriate in a civil action, including, but not limited to, declaratory judgments, orders of remand, injunctions, and writs of mandamus and prohibition.

(2) The Court of International Trade may not grant an injunction or issue a writ of mandamus in any civil action commenced to review any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974, or any final determination of the Secretary of Commerce under section 251 or section 271 of such Act.

(3) In any civil action involving an application for the issuance of an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930, the Court of International Trade may issue an order of disclosure only with respect to the information specified in such section.

(4) In any civil action described in section 1581(h) of this title, the Court of International Trade may only order the appropriate declaratory relief.

(5) In any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of Canadian merchandise, as determined by the administering authority, the Court of International Trade may not order declaratory relief.

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